

4 NOVEMBER 1946

I N D E X

Of

WITNESSES

(None)

I N D E X

Of

EXHIBITS

<u>Doc.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
219P(1)	920		Memorandum by Secretary of State Stimson dated 22 September 1931, (conversation between himself and the Japanese Ambassador DEBUCHI)		9340
219P(2)	921		Memorandum by Secretary of State Stimson dated 22 September 1931		9344
219P(3)	922		Telegram from Secretary of State to Neville, in Charge in Japan, dated 24 September 1931		9348
219P(5)	923		Excerpt of Statement issued After Extraordinary Cabinet Meeting September 24, 1931 (The Japanese Embassy to the Department of State)		9350
219P(6)	924		Excerpt from a note of Japanese Foreign Minister to U. S. Embassy in Japan dated 28 September 1931		9351
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219P(8)	926		Excerpt from a telegram from Secretary of State to Gilbert, the Consul at Geneva dated 9 October 1931		9356
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219P(4)	930		A Telegram from Secretary of State Stimson to the Ambassador in Japan, Forbes, dated 7 January 1932		9366
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219P(26)	942		Letter from Japanese Ambassador SAITO to the Secretary of State in Washington dated 29 December 1934		9416
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219P(35)	952		Excerpt from Press Release issued by the Department of State, Washington, dated 23 August 1937		9437
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853-B	954-B		Excerpt from exhibit No. 954 - A Reply from the Japanese Government Declining the Invitation to the Brussels Con- ference		9446
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219P(17)	965		Excerpt from the informal Memorandum of the American Embassy in Japan to the Japanese Foreign Minister dated 31 August 1934		9481
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Monday, 4 November, 1946

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

- - -

Appearances:

For the Tribunal, same as before, with the
exception of the HONORABLE R. B. PAL, Member from
India, not sitting.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session
3 and ready to hear any matter brought before it.

4 THE PRESIDENT: All the accused are present
5 except OKAWA, who is represented by counsel. Let the
6 record show from day to day his continued absence un-
7 til further announcement by the Tribunal.

8 Mr. Cunningham.

9 MR. CUNNINGHAM: If the Tribunal please,
10 Friday afternoon the objections to the opening state-
11 ment on this phase of the case were prepared, but be-
12 fore the statement was given it was suggested that
13 they be deferred until after and considered the same
14 as if they were made before the statement was read.

15 I should like to register now the objections
16 thereto and state the reasons for the objections,
17 based upon the rulings and the admonitions heretofore
18 made by the Tribunal. It is unnecessary for me to
19 here repeat all of the rulings of the Tribunal con-
20 cerning the content of opening statements. The
21 opening statement, 62 pages in length, is unduly long;
22 it is repetitious, argumentative, is general in its
23 nature, and it reviews the evidence of the part of the
24 case which has been tried up to this point. It vio-
25 lates the provisions of the Charter and the additional

1 privileges granted thereunder, as well as inter-
2 fering with Article 12, Section a, calling for ex-
3 peditious hearing of the issues raised by the charges.
4 It is not an opening statement in the broad sense of
5 the term and exceeds the limits already imposed by
6 the Tribunal, abuses the privileges which have been
7 defined so often, and it wastes time and embraces
8 conclusions and statements impossible to prove, is
9 filled with immaterial and irrelevant matter not in
10 issue in this case, and invades the function of the
11 Tribunal in numerous instances.

12 By way of specific objection to the state-
13 ment, I ask that the Court require the prosecution to
14 delete from the opening statement pages 1 to 9 a, which
15 is a recitation of evidence already in the record.
16 Page 10 is objected to because it is purely legal
17 argument commenting on evidence presented in another
18 phase of the case, and is summation.

19 Page 11, because it is comment upon the
20 evidence of another phase of the case and does not
21 pertain to any question covered by the coming phase
22 of this case. It contains argument which has no
23 place in an opening statement.

24 Page 12, paragraph 2, for the reason that
25 it is voluntary, unsworn statement of counsel in the

1 form of his own testimony, and in no manner indicates
2 if and how it is to be proven otherwise; states legal
3 conclusions which this Tribunal must decide after
4 hearing all of the evidence and argument by all coun-
5 sel. Prosecutor places his evaluation on the evi-
6 dence without stating how he expects to prove it.

7 Page 13, paragraphs 1 and 2, because it
8 does not state anything new or subject to proof in
9 this phase of the case. It has been reviewed by the
10 prosecution in two phases of the case already.

11 Page 14, paragraph 1, characterizes, generalizes,
12 but states no facts to be adduced to support these de-
13 ductions.

14 Page 15, because it is purely an argument,
15 attempting to exonerate nations and individuals not
16 on trial here and glorifying the spirit and actions
17 of the prosecuting nations, and a rank abuse of the
18 right being exercised of an opening statement.

19 Page 16, paragraphs 1 and 2. A review of
20 the China case -- phase of the case, and a plea as
21 to the attitude of the United States and Britain, but
22 has no drift as to the evidence against these de-
23 fendants.

24 Page 17, paragraph 1, which is a plea of
25 adjudication of Japan's status in the family

1 of nations up to the time 1937, and is not a statement
2 of facts to be proven or a subject for judicial in-
3 quiry.

4 Page 17, paragraph 2, is a statement of
5 matters thoroughly explored in other phases of the
6 case, contains no new matter or elements essential
7 to be proven in this phase of the case.

8 Pages 20 and 21 cover the economic ag-
9 gression of the China phase and re-emphasises but
10 relates to no new matter, and contains conclusions
11 and deductions of counsel, but shows no drift or
12 source of the evidence to be presented.

13 Page 21 states nothing new or in issue in
14 this case, mere explanatory notes without reference
15 to facts to be proven and a review of phases of the
16 case already covered.

17 Page 22, review of the most recent phase of
18 the case concerning currency issues and commenting on
19 what other nations would have done had they known of
20 the facts revealed.

21 Page 22 - we find the German-Japanese col-
22 laboration explored again. Nothing new to be dis-
23 cussed or promised to be proven.

24 Page 25 is a statement of what the pro-
25 secution would like for the Tribunal to believe, but

1 states no means or vehicle of evidence by which they
2 expect to show it.

3 I will go from page 25 to page 45, which
4 grossly invades the province of the Tribunal in at-
5 tempting to dictate the legal effects of the acts
6 described and is highly improper in an opening state-
7 ment.

8 Object to page 46, paragraph 1, because it
9 reverts to the Japanese-German relations.

10 Page 47, paragraph 1, states legal opinion
11 and conclusions not in the province of the prosecu-
12 tion, but a task for the Court to perform after
13 hearing the evidence on both sides.

14 Page 56 concludes the state of mind and
15 emotions of the Japanese nation, highly speculative
16 and problematical, certainly a fact not to be proved
17 by the facts outlined in this opening statement.

18 If your Honors please, although it is dif-
19 ficult to control the prosecution in a matter of this
20 nature, this general and detailed objection is made
21 for the purpose of emphasizing the unfairness trans-
22 lated into the proceedings through the wholesale abuse
23 of the right to make a concise statement at the be-
24 ginning of each phase of the case, outlining briefly
25 the drift of the evidence and the scope of the charge

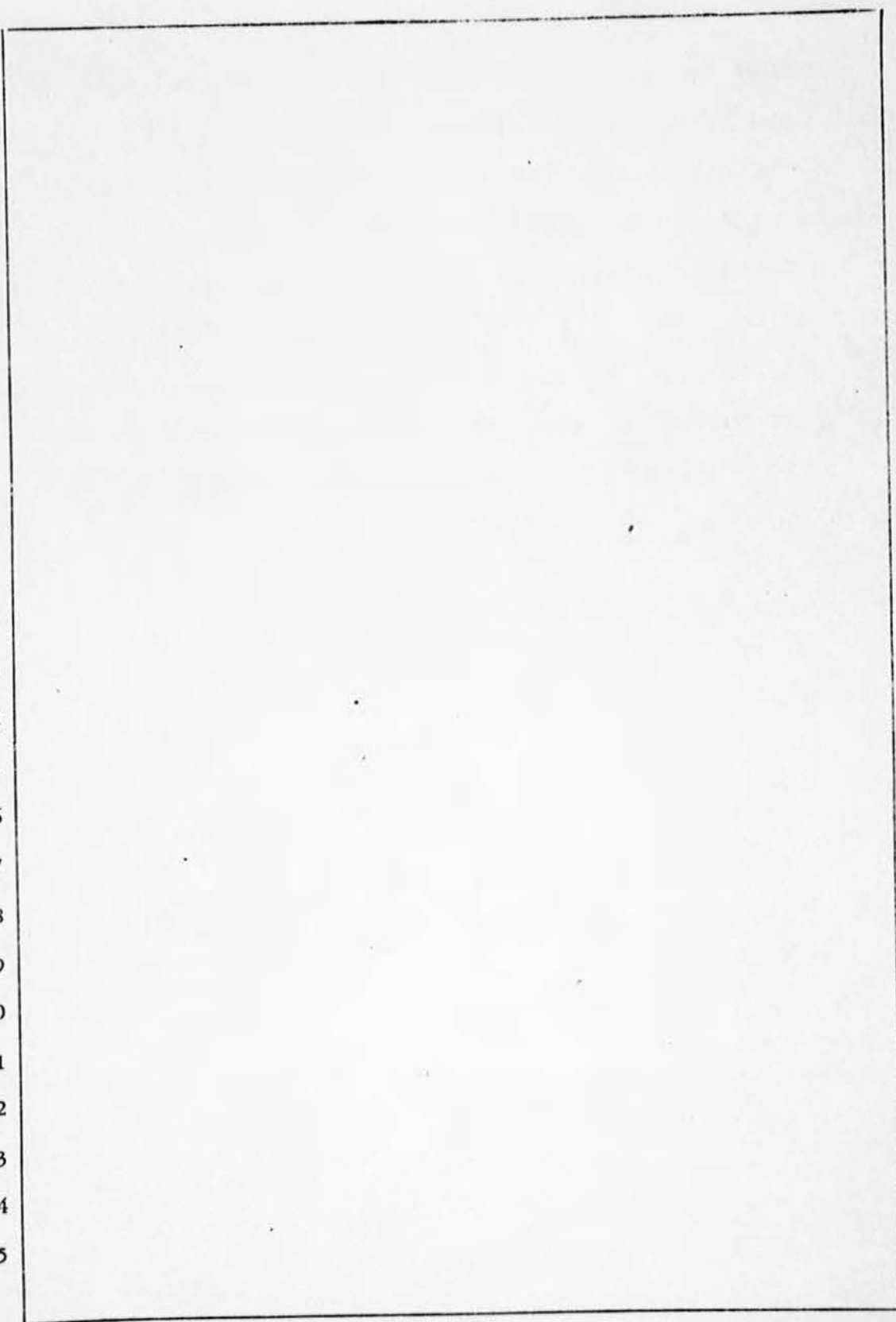
1 to be proven by the facts. The constant repetition,
2 the unjustifiable arguments of counsel, and the con-
3 clusions offered to this Tribunal would constitute
4 reversible error anywhere. I urge that such procedure
5 not be allowed and that the prosecution be directed
6 to delete the objectionable features from their
7 opening statement.

8 THE PRESIDENT: Mr. Smith. Do not repeat
9 any objection taken by Mr. Cunningham. He hasn't
10 overlooked much.

11 MR. SMITH: Your Honor, I had no intention
12 of repeating anything Mr. Cunningham said. I am
13 speaking now on behalf of Mr. HIRATA. I have a short
14 statement to make in view of the fact that this is
15 a proceeding before an International Tribunal and
16 certainly ought to be conducted from the standpoint
17 of behavior of counsel on a high plane, and counsel
18 for the prosecution be required to make a fair state-
19 ment, not to say anything about a misleading one.

20 I want to call your Honors' attention to
21 the last paragraph on page 12. What I have to say
22 is well known to the prosecution and is a matter of
23 common notoriety in Japan and has been for years.
24 The paragraph starts out that Mr. HIRATA, who was
25 then Foreign Minister, expressed to Secretary Hull a

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1 desire for peaceful diplomatic relations, and sent a
2 note that nothing in the relations between the two
3 countries was fundamentally incapable of amicable
4 solution. About a month after that a man by the name
5 of AMAU, who was in the press section of the Foreign
6 Office, in talking with some newspaper men, used an
7 unfortunate expression which the press immediately
8 played up as an ultimatum from Japan to the powers
9 of the world to keep their hands off of China.

1 documents. Some of the defense counsel would like
2 to have the Court advise them, as a point of informa-
3 tion, as to whether or not, under this order and under
4 Section III, Article 9, paragraph e, it is intended
5 that there should be listed the witnesses who will
6 appear voluntarily and do not require a subpoena.

7 THE PRESIDENT: I am reading a note that I
8 just received bearing on the other matter. Will the
9 shorthand writer please repeat what Mr. Logan said?

10 (Whereupon, the statement of Mr. Logan
11 was read by the official court reporter.)

12 THE PRESIDENT: No, that applies only where
13 the witness is to be subpoenaed. I explained that
14 before, Mr. Logan.

15 I do not say the Court's jurisdiction does
16 not extend to witnesses who come voluntarily. But at
17 present I am purporting to exercise where the Court has
18 only compulsory jurisdiction over the witnesses.

19 MR. LOGAN: The second point, if the Tribunal
20 please, is, at the time the argument was had with
21 respect to this order, it was pointed out that the
22 defense objected to the prosecution obtaining a list
23 of these witnesses or being permitted to partake in
24 any of the hearings on such applications. There is
25 nothing contained in the order which either permits

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1 THE PRESIDENT: Mr. Chief of Counsel.

2 MR. KEENAN: The prosecution objects to this
3 effort, as it sees it, on the part of defense counsel
4 for HIROTA to present matters of evidentiary nature
5 in his defense at this stage of the proceeding.

6 THE PRESIDENT: I was about to say before the
7 Chief of Counsel interposed, that you were not stating
8 any ground of objection, Mr. Smith. Can you connect
9 it with one?

10 MR. SMITH: Your Honor, please, I am not
11 presenting a defense now. I say that the prosecution
12 has made a misleading statement, and certainly the
13 Court ought to be interested in that. If your Honor
14 indicates you are not interested, certainly I don't
15 care to go on. I thought it was a matter of such
16 importance that you ought to know what the facts are
17 at this time.

18 THE PRESIDENT: We cannot do anything irregu-
19 lar because the matter is of interest.

20 Mr. Logan.

21 MR. LOGAN: I would like to speak about another
22 matter for a moment, if the Tribunal please.

23 Today is the first day on which some of the
24 accused, under the Tribunal's order of October 24,
25 1946, must file their applications for witnesses and

1 documents. Some of the defense counsel would like
2 to have the Court advise them, as a point of informa-
3 tion, as to whether or not, under this order and under
4 Section III, Article 9, paragraph e, it is intended
5 that there should be listed the witnesses who will
6 appear voluntarily and do not require a subpoena.

7 THE PRESIDENT: I am reading a note that I
8 just received bearing on the other matter. Will the
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17 present I am purporting to exercise where the Court has
18 only compulsory jurisdiction over the witnesses.

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20 please, is, at the time the argument was had with
21 respect to this order, it was pointed out that the
22 defense objected to the prosecution obtaining a list
23 of these witnesses or being permitted to partake in
24 any of the hearings on such applications. There is
25 nothing contained in the order which either permits

1 this or disallows it; and if it is the purpose of the
2 order to permit the prosecution to obtain a list of
3 all witnesses at this time, we wish to enter an excep-
4 tion to the Court's ruling.

5 THE PRESIDENT: Well, in every national court
6 when a subpoena is issued there is a record on the file,
7 and everybody associated with the case can inspect
8 the file, so there is nothing private about it.

9 MR. LOGAN: May we have an exception to that,
10 your Honor?

11 THE PRESIDENT: You may.

12 MR. KEENAN: Mr. President, the prosecution
13 does not desire to comment upon the objections to the
14 opening statement, other than to point out that it has
15 been found advisable and necessary to refer to inci-
16 dents, the facts set forth, all of which it is expected
17 will be proven by documentary evidence. It does not
18 desire to argue the point unless requested to by the
19 Court.

20 THE PRESIDENT: Undoubtedly Mr. Higgins'
21 statement contains more than a concise opening state-
22 ment. It contains other matters besides forecast or
23 a statement of what evidence is about to be adduced
24 by the prosecution on this phase. Some of the matters
25 mentioned by Mr. Higgins have already been proved, as

1 Mr. Cunningham pointed out. I should say, they have
2 been the subject of evidence.

3 The decision on these objections should be
4 the same as the decision on the objection to the
5 Soviet prosecutor's opening statement. In principle,
6 there is no difference between the two. Our decision
7 will be the same; namely, we will pay regard only to
8 so much of Mr. Higgins' statement as is an opening
9 statement in the true sense; that is, as states the
10 evidence or indicates the evidence that he is about
11 to introduce.
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THE PRESIDENT: Mr. Hardin.

1 MR. HARDIN: If it please the Tribunal,
2 Mr. President, there has heretofore been presented
3 for identification, exhibit 58, which consists of two
4 volumes, I and II, and is entitled "Papers Relating
5 to the Foreign Relations of the United States - Japan,
6 1931 to 1941." We present in evidence many documents
7 found in these volumes.

8 First we offer in evidence IPS document 219P(1)
9 from exhibit 58 for identification, which is a memoran-
10 dum by Secretary of State Stimson, dated September 22,
11 1931, of a conversation between himself and Japanese
12 Ambassador DEBUCHI.

13 THE PRESIDENT: Mr. Logan.

14 MR. LOGAN: If the Tribunal please, we object
15 to the introduction of this document in evidence as no
16 application has been made, no order entered, to permit
17 the prosecution to use this excerpt from this book.

18 MR. HARDIN: This, Mr. President, is not an
19 excerpt. It is a completed article within itself.

20 THE PRESIDENT: Have you given the defense
21 translations into Japanese?

22 MR. HARDIN: Yes, sir.

23 THE PRESIDENT: Well, if that is so there is
24 no reason why the document should not be admitted.
25

1 It is admitted on the usual terms.

2 CLERK OF THE COURT: Prosecution's document
3 No. 219P(1) will receive exhibit No. 920.

4 (Whereupon, the document above
5 referred to was marked prosecution's exhibit
6 No. 920, and was received in evidence.)

7 MR. HARLIN: We read prosecution exhibit
8 No. 920.

9 "MEMORANDUM BY THE SECRETARY OF STATE

10 "22 September 1931

11 "(Washington,) September 22, 1931

12 "I opened the conversation with the Japa-
13 nese Ambassador by referring to our last talk on
14 September 17th when we had both expressed our feel-
15 ing that the relations of our two countries were in
16 such a satisfactory condition. I said I had been pro-
17 foundly surprised and concerned by what was taking
18 place in Manchuria and that I had sent Dr. Hornbeck
19 to see the Ambassador on Saturday and now as the matter
20 had developed I wished to see him myself. He said yes,
21 that he had seen Dr. Hornbeck and he had told him of
22 how surprised he (the Ambassador) had been and how con-
23 cerned he was and how impossible it was for him to under-
24 stand the causes of what had taken place.

25 "I explained that as he well knew, I had the

1 utmost confidence in Baron SHIDEHARA and his desire
2 for peace and correct international relations. I
3 told him that I had learned from Dr. Hornbeck's re-
4 port of what Debuchi had said Sunday--that there was
5 a sharp cleavage between SHIDEHARA and some of the
6 militaristic elements of his government. He said
7 that that was so. I said that what I was now doing
8 was seeking to strengthen Baron SHIDEHARA's hand and
9 not to weaken it. The Ambassador said he understood
10 that perfectly. I then took the memorandum which
11 had been prepared (a copy of which is annexed) and
12 read it very slowly to the Ambassador, paraphrasing
13 the language into more simple words wherever it seem-
14 ed at all necessary in order that he should fully under-
15 stand it. He repeated many of the sentences, show-
16 ing that he did understand. When I had finished I
17 said that this was not to be taken as a formal note
18 or an official action on the part of my government,
19 but as the memorandum of a verbal statement given to
20 the Ambassador for the purpose of enabling him to
21 understand and report to his government how I, with
22 my background of friendship toward Japan, felt to-
23 wards this situation. I said that the Ambassador
24 was at liberty to send it to SHIDEHARA or not, as he
25 saw fit. He said he understood perfectly and that the

1 memorandum did not represent an official note but
2 that if the situation was not remedied he understood
3 that it might be followed by official action on our
4 part later. He said he would communicate its con-
5 tents to his government that evening.

6 "I then told him that there was one thing,
7 however, that I would like to ask of him and that was
8 that he postpone his departure for Japan until the
9 situation was in better shape. I told him I felt
10 confidence in him from our long relations together
11 and that it would be easier to handle the situation
12 if he was here. He expressed himself as very much
13 touched by this and said that he was glad to be able
14 to say that this morning he had, after having purchased
15 his tickets and made all his plans, decided to post-
16 pone his departure and had told Madame Debuchi and
17 his daughter to that effect, and had telegraphed out
18 to the Japanese Consul in San Francisco to cancel
19 the appointments he had made.

20 "I spent quite a little time after reading
21 the memorandum in pointing out what a serious im-
22 pression it would make in this country if the situa-
23 tion of Manchuria is not restored to the status quo.
24 He said he fully understood that and he had been
25 surprised at the moderation of our American press

1 thus far and attributed that to the care which I
2 had taken in the press conferences. He begged me
3 that if the time should ever come when I did wish to
4 act officially in this matter I would first inform
5 him. I said I would try to do so.

6 "H(enry) L. S(stimson)."
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1 We offer in evidence IPS document 219P from
2 exhibit 58 for identification. This is the memorandum
3 by the Secretary of State to the Japanese Ambassador
4 dated September 22, 1931.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 219P(2) will receive exhibit No. 921.

8 (Whereupon, the document above
9 referred to was marked prosecution's exhibit
10 No. 921, and was received in evidence.)

11 MR. HARLIN:

12 "MEMORANDUM BY THE SECRETARY OF STATE

13 "TO THE JAPANESE AMBASSADOR --

14 "22 SEPTEMBER 1931

15 "MEMORANDUM

16 "Without going into the background, either
17 as to the immediate provocation or remote causes or
18 motivation, it appears that there has developed with-
19 in the past four days a situation in Manchuria which
20 I find surprising and view with concern. Japanese
21 military forces, with some opposition at some points
22 by Chinese military forces, have occupied the princi-
23 pal strategic points in South Manchuria, including
24 the principal administrative center, together with
25 some at least of the public utilities. It appears

1 that the highest Chinese authority ordered the
2 Chinese military not to resist, and that, when news
3 of the situation reached Tokyo, but after most of the
4 acts of occupation had been consummated, the Japa-
5 nese Government ordered cessation of military activi-
6 ties on the part of the Japanese forces. Neverthe-
7 less, it appears some military movements have been
8 continuously and are even now in process. The actual
9 situation is that an army of the Japanese Government
10 is in complete control of South Manchuria.

11 "The League of Nations has given evidence of
12 its concern. The Chinese Government has in various
13 ways invoked action on the part of foreign govern-
14 ments, citing its reliance upon treaty obligations
15 and inviting special reference to the Kellogg Pact.

16 "This situation is of concern, morally,
17 legally and politically to a considerable number of
18 nations. It is not exclusively a matter of concern
19 to Japan and China. It brings out question at once
20 the meaning of certain provisions of agreements, such
21 as the Nine Powers Treaty of February 6, 1922, and
22 the Kellogg-Briand Pact.

23 "The American Government is confident that
24 it has not been the intention of the Japanese Govern-
25 ment to create or to be a party to the creation of a

1 situation which brings the applicability of treaty
2 provisions into consideration. The American Govern-
3 ment does not wish to be hasty in formulating its
4 conclusions or in taking a position. However, the
5 American Government feels that a very unfortunate
6 situation exists, which no doubt is embarrassing
7 to the Japanese Government. It would seem that the
8 responsibility for determining the course of events
9 with regard to the liquidating of this situation
10 rests largely upon Japan, for the simple reason that
11 Japanese armed forces have seized and are exercising
12 de facto control in South Manchuria.

13 "It is alleged by the Chinese, and the
14 allegation has the support of circumstantial evi-
15 dence, that lines of communication outward from
16 Manchuria, have been cut or interfered with. If
17 this is true, it is unfortunate.

18 "It is the hope of the American Government
19 that the orders which it understands have been given
20 both by the Japanese and the Chinese Governments to
21 their military forces to refrain from hostilities
22 and further movements will be respected and that
23 there will be no further application of force. It
24 is also the hope of the American Government that the
25 Japanese and the Chinese Governments will find it

1 possible speedily to demonstrate to the world that
2 neither has any intention to take advantage, in
3 futherance of its own peculiar interests, of the situ-
4 ation which has been brought about in connection with
5 and in consequence of this use of force.

6 "That has occurred has already shaken the
7 confidence of the public with regard to the stabili-
8 ty of conditions in Manchuria, and it is believed
9 that the crystallizing of a situation suggesting
10 the necessity for an indefinite continuance of mili-
11 tary occupation would further undermine that confi-
12 dence."

1 We offer in evidence IPS document 219P(3)
2 from exhibit 58. This is a telegram from Secretary
3 of State to Neville, the Charge in Japan, dated
4 September 24, 1931.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 219P(3) will receive exhibit No. 922.

8 (Whereupon, the document above
9 referred to was marked prosecution's exhibit
10 No. 922, and was received in evidence.)

11 MR. HARDIN: "TELEGRAM
12 THE SECRETARY OF STATE TO THE CHARGE IN JAPAN
13 (NEVILLE)

14 Washington, September 24,
15 1931--4 p.m.

16 "167. Please deliver to the Minister for
17 Foreign Affairs immediately as a note, the identical
18 text of which will be communicated by the American
19 Minister to China to the Chinese Minister for
20 Foreign Affairs, the following:

21 "The Government and people of the United
22 States have observed with regret and with
23 great concern events of the past few days in
24 Manchuria. In view of the sincere desire
25 of the people of this country that principles

1 and methods of peace shall prevail in inter-
2 national relations, and of the existence of
3 treaties, to several of which the United
4 States is a party, the provisions of which are
5 intended to regulate the adjustment of contro-
6 versies between nations without resort to use
7 of force, the American Government feels war-
8 ranted in expressing to the Chinese and the
9 Japanese Governments its hope that they will
10 cause their military forces to refrain from any
11 further hostilities will so dispose respective-
12 ly of their armed forces as to satisfy the re-
13 quirements of international law and international
14 agreements, and will refrain from activities
15 which may prejudice the attainment by amicable
16 methods of an adjustment of their differences.'

17 STIMSON"

18 We offer in evidence IPS document No.
19 219P(5), from exhibit 58, excerpt from the Japanese
20 Embassy to the Secretary of State in Washington,
21 September 24, 1931.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Prosecution's document
24 No. 219P(5) will receive exhibit No. 923.

25 (Whereupon, the document above

1 referred to was marked prosecution's exhibit
2 No. 923, and was received in evidence.

3 MR. HARDIN:

4 "THE JAPANESE EMBASSY TO THE DEPARTMENT
5 OF STATE
6 "STATEMENT ISSUED AFTER EXTRAORDINARY
7 CABINET MEETING
8 SEPTEMBER 24, 1931

9 "Excerpt.

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11 "(5) It may be superfluous to repeat that
12 the Japanese Government harbors no territorial
13 designs in Manchuria."
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1 MR. HARDIN: We offer in evidence IPS
2 document No. 219P (6) from exhibit 58. This is an
3 excerpt from a note of Japanese Foreign Minister to
4 the United States Embassy in Japan, dated September
5 28, 1931.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution's document
8 No. 219P (6) will receive exhibit No. 924.

9 (Whereupon, the document above
10 referred to was marked prosecution's exhibit
11 No. 924 and was received in evidence.)

12 MR. HARDIN: (Reading)

13 "Note from Japanese Minister for Foreign
14 Affairs to the United States Embassy in Japan -- 28
15 September 1931. Excerpts.

16 "The Japanese Government is deeply sensible
17 of the friendly concern and the fairness of views with
18 which the American Government has observed the recent
19 course of events in Manchuria. . . Every care has been,
20 and will continue to be, exercised by the Japanese
21 forces to observe all the requirements of international
22 law and international agreements, and to avoid any
23 action that is calculated to prejudice an amicable
24 settlement of the differences between Japan and China.

25 "Neville."

1 We offer in evidence IPS document No. 219P (7)
2 from exhibit 58, which is excerpts from the resolution
3 of the Council of the League of Nations dated September
4 30, 1931.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 219P (7) will receive exhibit No. 925.

8 (Whereupon, the document above
9 referred to was marked prosecution's exhibit
10 No. 925 and was received in evidence.)

11 MR. HARDIN: (Reading)

12 "Resolution adopted by the Council of the
13 League of Nations on September 30, 1931. (Excerpts)

14 "The Council,

15 "1. Notes the replies of the Chinese and
16 Japanese Governments to the urgent appeal addressed
17 to them by its President and the steps that have
18 already been taken in response to that appeal;

19 "2. Recognizes the importance of the Japan-
20 ese Government's statement that it has no territorial
21 designs in Manchuria;

22 "3. Notes the Japanese representative's
23 statement that his Government will continue, as rapidly
24 as possible, the withdrawal of its troops, which has
25 already been begun, into the railway zone in proportion

1 as the safety of the lives and property of Japanese
2 nationals is effectively assured and that it hopes to
3 carry out this intention in full as speedily as may be.

4 "5. Being convinced that both Governments
5 are anxious to avoid taking any action which might
6 disturb the peace and good understanding between the
7 two nations, notes that the Chinese and Japanese repre-
8 sentatives have given assurances that their respective
9 Governments will take all necessary steps to prevent
10 any extension of the scope of the incident or any
11 aggravation of the situation;

12 "6. Requests both parties to do all in
13 their power to hasten the restoration of normal re-
14 lations between them and for that purpose to continue
15 and speedily complete the execution of the above-
16 mentioned undertakings."

17 THE PRESIDENT: Mr. Logan.

18 MR. LOGAN: If the Tribunal please, we re-
19 quest the prosecution to read into the record paragraph
20 four, which refers to the representatives' of the
21 Chinese Government statement with respect to its
22 assumption of responsibility.

23 THE PRESIDENT: Was that read before in the
24 Chinese phase?

25 MR. HARDIN: Mr. President, I am not aware of

1 whether that was quoted there or not. This is one of
2 the excerpts which was the subject of the request and
3 it has been processed, both Japanese and Chinese, for
4 their benefit, along with--

5 THE PRESIDENT: If it is a short statement,
6 you may see fit to read it to save time. We leave it
7 to you.

8 MR. HARDIN: I appreciate the force of your
9 statement, Mr. President. The point is that there
10 will be a very large number of them. They are matters
11 which defense regard as defensive matter and I hope,
12 Mr. President, we may not be required to stop as we
13 go along to read all those excerpts provided for them.

14 MR. LOGAN: We have no intention, your Honor,
15 of requesting prosecution to read all those excerpts
16 but there are one or two which we think are important
17 and which should be read with the particular document.
18 This one--

19 THE PRESIDENT: This a 6-b (1) document, is
20 it not?

21 MR. LOGAN: That is right, but this particular
22 document is a resolution of the Council of the League
23 of Nations. I think it important that the Tribunal
24 be advised of all the facts on which they made their
25 decision and this item 4 is one of them.

1 THE PRESIDENT: Did you ask for this
2 additional material in chambers?

3 We are adverse to the defense making
4 repeated applications here in Court to have these
5 additional paragraphs read. We think, Mr. Logan
6 and other counsel for the defense, that you should
7 speak to the prosecutor out of court and if he does
8 not agree, then take his decision because we will
9 leave it to him. That is the correct course for
10 us to pursue in the absence of very exceptional
11 circumstances and these are not exceptional.

12 Mr. Hardin.
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1 MR. HARDIN: I have read the rest of
2 this.

3 We now offer in evidence IPS document
4 No. 219P (8) from exhibit 58, which is an excerpt
5 from a telegram from Secretary of State to Gilbert,
6 the Consul at Geneva, dated October 9, 1931.

7 THE PRESIDENT: Admitted on the usual
8 terms.

9 CLERK OF THE COURT: Prosecution's document
10 No. 219P (8) will receive exhibit No. 926.

11 (Whereupon, the document above
12 referred to was marked prosecution's exhibit
13 No. 926 and was received in evidence.)

14 MR. HARDIN: (Reading)

15 "TELEGRAM

16 "THE SECRETARY OF STATE TO THE CONSUL

17 AT GENEVA (GILBERT)

18 "(Paraphrase)

19 "Washington,

20 "October 9, 1931

21 "6 p.m.

22
23 "On its part the American Government acting
24 independently through its diplomatic representatives
25

1 will endeavor to reinforce what the League does and
2 will make clear that it has a keen interest in the
3 matter and is not oblivious to the obligations which
4 the disputants have assumed to their fellow signatories
5 in the Pact of Paris as well as in the Nine-Power Pact
6 should a time arise when it would seem advisable to
7 bring forward those obligations. By this course we
8 avoid any danger of embarrassing the League in the
9 course to which it is now committed.

10 "Stimson."

11 We offer in evidence IPS document No. 219P (9)
12 from exhibit 58, which is a resolution of the Council
13 of the League of Nations, dated October 24, 1931.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Prosecution's document
16 No. 219P (9) will receive exhibit No. 927.

17 (Whereupon, the document above
18 referred to was marked prosecution's exhibit
19 No. 927 and was received in evidence.)

20 MR. HARDIN: (Reading)

21 "Resolution voted upon by the Council of the
22 League of Nations on October 24, 1931.

23 "The Council,

24 "In pursuance of the resolution passed on
25 September 30th:

1 "Noting that in addition to the invocation by
2 the Government of China, of Article 11 of the Covenant
3 of the League of Nations, Article 2 of the Pact of
4 Paris has also been invoked by a number of the Govern-
5 ments:

6 "(1) Recalls the undertakings given to the
7 Council by the Governments of China and Japan in that
8 resolution, and in particular the statement of the
9 Japanese representative that the Japanese Government
10 would continue as rapidly as possible the withdrawal
11 of its troops into the railway zone in proportion as
12 the safety of the lives and property of Japanese
13 nationals is effectively assured, and the statement
14 of the Chinese representative that his Government will
15 assume the responsibility for the safety of the lives
16 and property of Japanese nationals outside that zone--
17 a pledge which implies the effective protection of
18 Japanese subjects residing in Manchuria;

19 "(2) Recalls further that both Governments
20 have given the assurance that they would refrain from
21 any measures which might aggravate the existing situa-
22 tion, and are therefore bound not to resort to any
23 aggressive policy or action and to take measures to
24 suppress hostile agitation;
25

"(3) Recalls the Japanese statement that

1 Japan has no territorial designs in Manchuria, and
2 notes that this statement is in accordance with the
3 terms of the Covenant of the League of Nations, and
4 of the Nine-Power Treaty, the signatories of which
5 are pledged to respect the sovereignty, the inde-
6 pendence, and the territorial and administrative
7 integrity of China;

8 "(4) Being convinced that the fulfillment
9 of these assurances and undertakings is essential for
10 the restoration of normal relations between the two
11 parties:

12 "(a) Calls upon the Japanese Government
13 to begin immediately and to proceed progressively
14 with the withdrawal of its troops into the railway
15 zone, so that the total withdrawal may be effected
16 before the date fixed for the next meeting of the
17 Council;

18 "(b) Calls upon the Chinese Government,
19 in execution of its general pledge to assume the
20 responsibility for the safety of the lives and prop-
21 erty of all Japanese subjects resident in Manchuria,
22 to make such arrangements for taking over the territory
23 thus evacuated as will ensure the safety of the lives
24 and property of Japanese subjects there, and requests
25 the Chinese Government to associate with the Chinese

1 authorities designated for the above purpose,
2 representatives of other Powers in order that such
3 representatives may follow the execution of the
4 arrangements;

5 "(5) Recommends that the Chinese and
6 Japanese Governments should immediately appoint
7 representatives to arrange the details of the
8 execution of all points relating to the evacuation
9 and the taking over of the evacuated territory so
10 that they may proceed smoothly and without delay;

11 "(6) Recommends the Chinese and Japanese
12 Governments, as soon as the evacuation is completed,
13 to begin direct negotiations on questions outstanding
14 between them, and in particular those arising out of
15 recent incidents as well as those relating to exist-
16 ing difficulties due to the railway situation in
17 Manchuria. For this purpose, the Council suggests
18 that the two parties should set up a conciliation
19 committee, or some such permanent machinery;

20 "(7) Decides to adjourn till November 16th,
21 at which date it will again examine the situation,
22 but authorizes its President to convoke a meeting at
23 any earlier date should it in his opinion be
24 desirable."
25

We offer in evidence IPS document No. 219P (10)

1 from exhibit 58, excerpts from a resolution of the
2 Council of the League of Nations, December 10, 1931.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Prosecution's document
5 No. 219P (10) will receive exhibit No. 928.

6 (Whereupon, the document above
7 referred to was marked prosecution's exhibit
8 No. 928 and was received in evidence.)

9 MR. HARDIN: We read prosecution's exhibit
10 No. 928:

11 "Resolution adopted by the Council of the
12 League of Nations on December 10, 1931. (Excerpts.)

13 "The Council.

14 "(1) Reaffirms the resolution passed unan-
15 imously by it on September 30th, 1931, by which the
16 two parties declare that they are solemnly bound; it
17 therefore calls upon the Chinese and Japanese Govern-
18 ments to take all steps necessary to assure its execu-
19 tion, so that the withdrawal of the Japanese troops
20 within the railway zone may be effected as speedily
21 as possible under the conditions set forth in the
22 said resolution;

23 "Decides to appoint a Commission of five
24 members to study on the spot and to report to the
25 Council on any circumstance which, affecting

1 international relations, threatens to disturb peace
2 between China and Japan, or the good understanding
3 between them, upon which peace depends."

4 THE PRESIDENT: We will recess for fifteen
5 minutes.

6 ("whereupon, at 1045, a recess was
7 taken until 1100, after which the proceedings
8 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International Mili-
2 tary Tribunal for the Far East is now resumed.

3 MR. HARDIN: We now offer in evidence I. P. S.
4 document No. 219P-11 from exhibit 58, which is a state-
5 ment from Secretary of State Stimson to Johnson, United
6 States Minister in China, dated December 11, 1931.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Prosecution's document
9 No. 219P-11 will receive exhibit No. 929.

10 (Whereupon, the above-mentioned docu-
11 ment was marked prosecution's exhibit No. 929
12 and received in evidence.)

13 MR. HARDIN: We read prosecution's exhibit No.
14 929:

15 "THE SECRETARY OF STATE TO THE MINISTER IN
16 CHINA (JOHNSON)

17 "Washington, December 11, 1931
18 11 a.m.

19 "455. On December 10 the Secretary of State issued
20 a statement to the press as follows:

21 "The Government of the United States is gratified
22 at the unanimous adoption by the Council of the League
23 of Nations of the Resolution of December 10. This
24 represents a definite step of progress in a long and
25 difficult negotiation which R. Briand and his associates

1 have conducted with great patience.

2 "The Council of the League of Nations
3 was in session on September 18 when the present
4 situation in Manchuria first developed. China at
5 once appealed to the Council under Article 11 of
6 the League Covenant. The Council took immediate
7 cognizance of this appeal, and China and Japan
8 participated in the discussions before it in
9 accordance with their obligations as parties to
10 the covenant. This Government has from the begin-
11 ning endeavored to cooperate with and support these
12 efforts of the Council by representations through
13 the diplomatic channels to both Japan and China.
14 Not only are the American people interested in the
15 same objective sought by the League of preventing
16 a disastrous war and securing a peaceful solution
17 of the Manchurian controversy, but as a fellow
18 signatory with Japan and China in the Kellogg-
19 Briand Pact and in the so-called Nine-Power Treaty
20 of February 6, 1922, this government has a direct
21 interest in and obligation under the undertakings
22 of those treaties.

23 "The present Resolution provides for the
24 immediate cessation of hostilities. It reaffirms
25 the solemn pledge of Japan to withdraw her troops

1 within the railway zone as speedily as possible.

2 It provides for the appointment of a commission of
3 five members to study on the spot and report to the
4 Council on any circumstances which disturbs the peace
5 or affects the good understandings between China and
6 Japan. Such a provision for a neutral commission is
7 in itself an important and constructive step towards
8 an ultimate and fair solution of the intricate problem
9 presented in Manchuria. It means the application with
10 the consent of both China and Japan of modern and
11 enlightened methods of conciliation to the solution
12 of this problem. The principle which underlies it
13 exists in many treaties of conciliation to which the
14 United States is a party and which have played in
15 recent years a prominent part in the constructive
16 peace machinery of the world. The operation of
17 such a commission gives time for the heat of contro-
18 versy to subside and makes possible a careful study
19 of the underlying problem.....

20 "These are the essential principles for
21 which the United States and the nations represented
22 on the Council have been striving and it is in itself
23 a signal accomplishment that there has been arrayed
24 behind these principles in a harmonious cooperation
25 such a solid alignment of the nations of the world."

1 MR. HARDIN (Continuing): We offer in evidence
2 I. P. S. document No. 219P-4, from exhibit 58, a telegram
3 from Secretary of State Stimson to the Ambassador in
4 Japan, Forbes, dated January 7, 1932.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 219P-4 will receive exhibit No. 930.

8 (Whereupon, the above-mentioned docu-
9 ment was marked prosecution's exhibit No. 930
10 and received in evidence.)

11 MR. HARDIN: We now read prosecution's exhibit
12 No. 930.

13 "TELEGRAM

14 "THE SECRETARY OF STATE TO THE AMBASSAOR
15 IN JAPAN (FORBES)

16 "Washington, January 7, 1932 - noon.

17 "7. Please deliver to the Foreign Office
18 on behalf of your Government as soon as possible the
19 following note:

20 "With the recent military operations about
21 Chinchow, the last remaining administrative authority
22 of the Government of the Chinese Republic in South
23 Manchuria, as it existed prior to September 18th,
24 1931, has been destroyed. The American Government
25 continues confident that the work of the neutral

1 commission recently authorized by the Council of
2 the League of Nations will facilitate an ultimate
3 solution of the difficulties now existing between
4 China and Japan. But in view of the present situ-
5 ation and of its own rights and obligations therein,
6 the American Government deems it to be its duty to
7 notify both the Imperial Japanese Government and the
8 Government of the Chinese Republic that it cannot
9 admit the legality of any situation de facto nor
10 does it intend to recognize any treaty or agreement
11 entered into between those Governments, or agents
12 thereof, which may impair the treaty rights of the
13 United States or its citizens in China, including
14 those which relate to the sovereignty, the independence,
15 or the territorial and administrative integrity of
16 the Republic of China, or to the international
17 policy relative to China, commonly known as
18 the open door policy; and that it does not intend
19 to recognize any situation, treaty or agreement
20 which may be brought about by means contrary to
21 the covenants and obligations of the Pact of Paris
22 of August 27, 1928, to which Treaty both China and
23 Japan, as well as the United States, are parties. '

24 "State that an identical note is being
25 sent to the Chinese government. STIMSON"

1 MR. HARDIN (Continuing): We offer in evidence
2 I. P. S. document 219P-13 from exhibit 58, which is an
3 excerpt from a telegram from Ambassador Forbes in Japan
4 to the Secretary of State in Washington, dated January
5 16, 1932.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution's document
8 No. 219P-13 will receive exhibit No. 931.

9 (Whereupon, the above-mentioned docu-
10 ment was marked prosecution's exhibit No. 931
11 and received in evidence.)

12 MR. HARDIN: (Reading)

13 "TELEGRAM

14 "THE AMBASSADOR IN JAPAN (FORBES) TO THE
15 SECRETARY OF STATE

16 "TOKYO, January 16, 1932 -- 2 p.m.

17 (Received January 16 -- 6:03 a.m.)

18 '11. Department's telegram No. 7, January
19 7, noon. I have just received the reply of the
20 Japanese Government which reads as follows:

21 "'The Government of Japan were well aware
22 that the Government of the United States could always
23 be relied on to do everything in their power to support
24 Japan's efforts to secure the full and complete ful-
25 fillment in every detail of the treaties of Washington

1 and the Kellogg Treaty for the Outlawry of War.

2 They are glad to receive this additional assurance
3 of the fact.

4 "As regards the question which Your Excel-
5 lency specifically mentions of the policy of the so-
6 called 'open door,' the Japanese Government, as
7 has so often been stated, regard that policy as a
8 cardinal feature of the politics of the Far East,
9 and only regrets that its effectiveness is so
10 seriously diminished by the unsettled conditions
11 which prevail throughout China. In so far as they
12 can secure it, the policy of the open door will
13 always be maintained in Manchuria, as in China proper.'

14 "While it need not be repeated that Japan
15 entertains in Manchuria no territorial aims or
16 ambitions, yet, as Your Excellency knows, the welfare
17 and safety of Manchuria and its accessibility for
18 general trade are matters of the deepest interest
19 and of quite extraordinary importance to the
20 Japanese people.'

21 "FORBES"
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1 MR. HARDIN (Continuing): We offer in evidence
2 I. P. S. document 219P-14, which is from exhibit 58 and
3 is a telegram from Secretary of State Stimson to Consul
4 General Cunningham in Shanghai, dated February 24, 1932.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 219P-14 will receive exhibit No. 932.

8 (Whereupon, the above-mentioned docu-
9 ment was marked prosecution's exhibit No. 932
10 and received in evidence.)

11 MR. HARDIN (Reading):

12 "TELEGRAM

13 "THE SECRETARY OF STATE TO THE CONSUL GENERAL

14 "AT SHANGHAI (CUNNINGHAM)

15 "Washington, February 24, 1932 - 2 p.m.

16 "50. For the Minister. Reference your February
17 9, 9 a.m., from Nanking, paragraph 2, and Nanking's 14,
18 January 24, 4 p.m., paragraph 5, and Shanghai's 72, Febru-
19 ary 18, 6 p.m., paragraph 5.

20 "1. There is now being released to the press
21 here the text of a letter from the Secretary of State to
22 Senator Borah, Chairman of the Committee on Foreign Rela-
23 tions of the Senate.

24 "You should communicate to the Foreign Office
25 and make available to the press, at once, the text, as

1 follows:

2 "'You have asked my opinion whether, as has
3 been sometimes recently suggested, present conditions
4 in China have in any way indicated that the so-called
5 Nine-Power Treaty has become inapplicable or ineffective
6 or rightly in need of modification, and if so, what I
7 considered should be the policy of this Government.

8 "'This Treaty, as you of course know, forms
9 the legal basis upon which now rests the 'Open Door'
10 policy towards China. That policy, enunciated by John
11 Hay in 1899, brought to an end the struggle among vari-
12 ous powers for so-called spheres of interest in China
13 which was threatening the dismemberment of that empire.
14 To accomplish this Mr. Hay invoked two principles (1)
15 equality of commercial opportunity among all nations
16 in dealing with China, and (2) as necessary to that
17 equality the preservation of China's territorial and
18 administrative integrity. These principles were not
19 new in the foreign policy of America. They had been
20 the principles upon which it rested in its dealings
21 with other nations for many years. In the case of
22 China they were invoked to save a situation which not
23 only threatened the future development and sovereignty
24 of that great Asiatic people, but also threatened to
25 create dangerous and constantly increasing rivalries

1 between the other nations of the world. War had al-
2 ready taken place between Japan and China. At the
3 close of that war three other nations intervened to
4 prevent Japan from obtaining some of the results of
5 that war claimed by her. Other nations sought and had
6 obtained spheres of interest. Partly as a result of
7 these actions a serious uprising had broken out in China
8 which endangered the legations of all of the powers at
9 Peking. While the attack on those legations was in
10 progress, Mr. Hay made an announcement in respect to
11 this policy as the principle upon which the powers should
12 act in the settlement of the rebellion. He said:

13 "The policy of the Government of the United
14 States is to seek a solution which may bring about per-
15 manent safety and peace to China, preserve Chinese
16 territorial and administrative entity, protect all rights
17 guaranteed to friendly powers by treaty and international
18 law, and safeguard for the world the principle of equal
19 and impartial trade with all parts of the Chinese Em-
20 pire."

21 "He was successful in obtaining the assent
22 of the other powers to the policy thus announced.

23 "In taking these steps Mr. Hay acted with
24 the cordial support of the British Government. In re-
25 sponding to Mr. Hay's announcement, about set forth,

1 Lord Salisbury, the British Prime Minister expressed
2 himself most emphatically as concurring in the policy
3 of the United States.'

4 "For twenty years thereafter the Open Door
5 policy rested upon the informal commitments thus made
6 by the various powers. But in the winter of 1921 to
7 1922, at a conference participated in by all of the
8 principal powers which had interests in the Pacific,
9 the policy was crystalized into the so-called Nine
10 Power Treaty, which gave definition and precision
11 to the principles upon which the policy rested. In
12 the first article of that Treaty, the contracting powers,
13 other than China, agreed:

14 "1. To respect the sovereignty, the inde-
15 pendence and the territorial and administrative in-
16 tegrity of China.

17 "2. To provide the fullest and most unem-
18 barrassed opportunity to China to develop and maintain
19 for herself an effective and stable government.

20 "3. To use their influence for the purpose
21 of effectually establishing and maintaining the princi-
22 ple of equal opportunity for the commerce and industry
23 of all nations throughout the territory of China.

24 "4. To refrain from taking advantage of con-
25 ditions in China in order to seek special rights or

1 privileges which would abridge the rights of subjects
2 or citizens of friendly states, and from countenancing
3 action inimical to the security of such states."

4 "This Treaty thus represents a carefully
5 developed and matured international policy intended,
6 on the one hand, to assure to all of the contracting
7 parties their rights and interests in and with regard
8 to China, and on the other hand, to assure to the
9 people of China the fullest opportunity to develop
10 without molestation their sovereignty and independence
11 according to the modern and enlightened standards be-
12 lieved to maintain among the peoples of this earth.
13 At the time this Treaty was signed, it was known that
14 China was engaged in an attempt to develop the free
15 institutions of a self-governing republic after her
16 recent revolution from an autocratic form of govern-
17 ment; that she would require many years of both eco-
18 nomic and political effort to that end; and that her
19 progress would necessarily be slow. The Treaty was thus
20 a covenant of self-denial among the signatory powers
21 in deliberate renunciation of any policy of aggression
22 which might tend to interfere with that development.
23 It was believed-- and the whole history of the devel-
24 opment of the 'Open Door' policy reveals that faith--
25 that only by such a process, under the protection of

1 such an agreement, could the fullest interests not
2 only of China but of all nations which have intercourse
3 with her best be served.

4 "In its report to the President announcing
5 this Treaty, the American Delegation, headed by the
6 then Secretary of State, Mr. Charles E. Hughes, said:"

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1 "It is believed that through this
2 Treaty the 'Open Door' in China has at last
3 been made a fact."

4 " During the course of the discussions which
5 resulted in the Treaty, the Chairman of the British
6 delegation, Lord Balfour, had stated that:

7 "The British Empire delegation understood
8 that there was no representative of any power
9 around the table who thought that the old
10 practice of 'spheres of interest' was either
11 advocated by any government or would be
12 tolerable to this conference. So far as the
13 British Government was concerned, they had,
14 in the most formal manner, publicly announced
15 that they regarded this practice as utterly
16 inappropriate to the existing situation."

17 " At the same time the representative of Japan,
18 Baron Shidahara, announced the position of his
19 government as follows:

20 "No one denies to China her sacred
21 right to govern herself. No one stands in
22 the way of China to work out her own great
23 national destiny."

24 " The Treaty was originally executed by the United
25 States, Belgium, the British Empire, China, France,

1 Italy, Japan, the Netherlands and Portugal. Sub-
2 sequently it was also executed by Norway, Bolivia,
3 Sweden, Denmark and Mexico. Germany has signed it
4 but her Parliament has not yet ratified it.

5 " It must be remembered also that this Treaty was
6 one of several treaties and agreements entered into
7 at the Washington Conference by the various powers
8 concerned, all of which were interrelated and inter-
9 dependent. No one of these treaties can be dis-
10 regarded without disturbing the general under-
11 standing and equilibrium which were intended to be
12 accomplished and effected by the group of agreements
13 arrived at in their entirety. The Washington
14 Conference was essentially a disarmament conference,
15 aimed to promote the possibility of peace in the
16 world not only through the cessation of competition
17 in naval armament but also by the solution of various
18 other disturbing problems which threatened the peace
19 of the world, particularly in the Far East. These
20 problems were all interrelated. The willingness
21 of the American government to surrender its then
22 commanding lead in battleship construction and to
23 leave its positions at Guam and in the Philippines
24 without further fortification, was predicated upon,
25 among other things, the self-denying covenants

1 contained in the Nine-Power Treaty, which assured
2 the nations of the world not only of equal opportunity
3 for their Eastern trade but also against the military
4 aggrandizement of any other power at the expense of
5 China. One cannot discuss the possibility of modi-
6 fying or abrogating those provisions of the Nine-
7 Power Treaty without considering at the same time
8 the other promises -- premises -- "upon which they
9 were really dependent.

10 "Six years later the policy of self-denial
11 against aggression by a stronger against a weaker
12 power, upon which the Nine-Power Treaty had been
13 based, received a powerful reinforcement by the
14 execution by substantially all the nations of the
15 world of the Pact of Paris, the so-called Kellogg-
16 Briand Pact. These two treaties represent inde-
17 pendent but harmonious steps taken for the purpose
18 of aligning the conscience and public opinion of
19 the world in favor of a **system** of orderly develop-
20 ment by the law of nations including the settle-
21 ment of all controversies by methods of justice
22 and peace instead of by arbitrary force. The
23 program for the protection of China from outside
24 aggression is an essential part of any such
25 development. The signatories and adherents of the

1 Nine-Power Treaty rightly felt that the orderly
2 and peaceful development of the 400,000,000 of
3 people inhabiting China was necessary to the
4 peaceful welfare of the entire world and that no
5 program for the welfare of the world as a whole
6 could afford to neglect the welfare and protection
7 of China.

8 " The recent events which have taken place in
9 China, especially the hostilities which have been
10 begun in Manchuria have latterly been extended to
11 Shanghai, far from indicating the advisability of
12 any modification of the treaties we have been
13 discussing, have tended to bring home the vital
14 importance of the faithful observance of the
15 covenants therein to all of the nations interested
16 in the Far East. It is not necessary in that
17 connection to inquire into the causes of the con-
18 troversy or attempt to apportion the blame between
19 the two nations which are unhappily involved; for
20 regardless of cause or responsibility, it is clear
21 beyond peradventure that a situation has developed
22 which cannot, under any circumstances, be reconciled
23 with the obligations of the covenants of these two
24 treaties, and that if the treaties had been faith-
25 fully observed such a situation could not have

1 arisen. The signatories of the Nine-Power Treaty
2 and of the Kellogg-Briand Pact who are not parties
3 to that conflict are not likely to see any reason
4 for modifying the terms of these treaties. To
5 them the real value of the faithful performance
6 of the treaties has been brought sharply home by
7 the perils and losses to which their nationals
8 have been subjected in Shanghai.

9 "That is the view of this Government. We see
10 no reason for abandoning the enlightened principles
11 which are embodied in these treaties. We believe
12 that this situation would have been avoided had
13 these covenants been faithfully observed, and no
14 evidence has come to us to indicate that a due
15 compliance with them would have interfered with
16 the adequate protection of the legitimate rights
17 in China of the signatories of these treaties and
18 their nationals.

19 " On January 7th last, upon the instruction of
20 the President, this Government formally notified
21 Japan and China that it would not recognize any
22 situation, treaty or agreement entered into by
23 those governments in violation of the covenants
24 of these treaties, which affected the rights of
25 our Government or its citizens in China. If a

1 similar decision should be reached and a similar
2 position taken by the other governments of the
3 world, a caveat will be placed upon such action
4 which, we believe, will effectively bar the
5 legality hereafter of any title or right sought
6 to be obtained by pressure or treaty violation,
7 and which, as has been shown by history in the
8 past, will eventually lead to the restoration to
9 China of rights and titles of which she may have
10 been deprived. "
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1 THE PRESIDENT: Treaty violations.

2 MR. HARDIN: Pardon me.

3 THE PRESIDENT: "Treaty violation," not "obligation;"

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5 Are you going to read from page 7?

6 MR. HARDIN (Continuing to read):

7 " In the past our Government, as one of the
8 leading powers on the Pacific Ocean, has rested its
9 policy upon an abiding faith in the future of the
10 people of China and upon the ultimate success in dealing with them of the principles of fair play, patience,
11 and mutual goodwill. We appreciate the immensity of the
12 task which lies before her statesmen in the development
13 of her country and its government. The delays in her
14 progress, the instability of her attempts to secure a
15 responsible government, were foreseen by Messrs. Hay
16 and Hughes and their contemporaries and were the very
17 obstacles which the policy of the Open Door was designed to meet. We concur with those statesmen, representing all the nations in the Washington Conference
18 who decided that China was entitled to the time
19 necessary to accomplish her development. We are prepared to make that our policy for the future.

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25 " Very sincerely yours, (Signed) Henry L. Stimson. '

1 "2. Repeat the whole of the above in clear
2 at once in Tokyo.

3 "Stimson."

4 MR. HARDIN: Mr. Williams will read.

5 THE PRESIDENT: Mr. Williams.

6 MR. WILLIAMS: We offer in evidence I. P. S.
7 document No. 219P-12 from exhibit 58, which is an excerpt
8 from a telegram from Secretary of State Stimson to the
9 Minister in Switzerland, Wilson, dated February 25, 1933.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Prosecution's document
12 No. 219P-12 will receive exhibit No. 933.

13 (Whereupon, the above-mentioned docu-
14 ment was marked prosecution's exhibit No. 933
15 and received in evidence.)

16 MR. WILLIAMS: We read prosecution's exhibit 933.

17 "TELEGRAM THE SECRETARY OF STATE TO THE MINISTER
18 IN SWITZERLAND (WILSON) (Excerpt.)

19 "Washington, February 25, 1933--6 p. m.

20 "78. Your 125, February 24, 7 p. m. Communi-
21 cate to Drummond (Secretary General of the League) as a
22 letter from me under today's date the following:

23 "There has been communicated to me the text
24 of your letter of February 24, 1933, transmitting to
25 me a copy of the report of the Committee of Nineteen

1 as adopted by the Assembly of the League of Nations
2 on this day.

3 "I note your request that I communicate
4 to you as soon as possible the reply of the Govern-
5 ment of the United States.

6 "In response to that request I have the
7 honor to state the views of the American Government
8 as follows:

9 "In the situation which has developed out
10 of the controversy between China and Japan, the pur-
11 pose of the United States has coincided in general
12 with that of the League of Nations, the common ob-
13 jective being maintenance of peace and settlement of
14 international disputes by pacific means. In pursu-
15 ance of that objective, while the League of Nations
16 has been exercising jurisdiction over a controversy
17 between two of its members, the Government of the
18 United States has endeavored to give support, reserv-
19 ing to itself independence of judgment with regard
20 to method and scope, to the efforts of the League on
21 behalf of peace.

22 "The findings of fact arrived at by the
23 League and the understanding of the facts derived by
24 the American Government from reports made to it by
25 its own representatives are in substantial accord."

1 "In the light of its findings of fact, the Assembly of
2 the League has formulated a measured statement of con-
3 clusions. With those conclusions the American Govern-
4 ment is in general accord. In their affirmations
5 respectively of the principle of non-recognition and
6 their attitude in regard thereto the League and the
7 United States are on common ground. The League has
8 recommended principles of settlement. In so far as
9 appropriate under the treaties to which it is a
10 party, the American Government expresses its general
11 endorsement of the principles thus recommended."

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14 Signed, "STINSON"
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Greenberg & Barton

We offer in evidence IPS document 219P (15) from exhibit No. 58, which is an excerpt from a communication from Ambassador Grew to the Secretary of State, dated November 14, 1934.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Prosecution's document No. 219P (15) will receive exhibit No. 934.

(Whereupon, the document above mentioned was marked prosecution's exhibit No. 934 and received in evidence.)

MR. E. WILLIAMS: We read prosecution exhibit No. 934:

"THE AMBASSADOR IN JAPAN (GREW) TO THE SECRETARY OF STATE

"TOKYO, November 14, 1934
(Received December 1.)

Excerpt.

"While it may be argued that the Japanese Government never specifically guaranteed the maintenance of the principles of the open door and equal opportunity in Manchuria after the government of Manchukuo was organized, the Japanese recognition and endorsement of the new regime was largely predicated upon the maintenance of those policies, as is evidenced by the speech of Count UCHIDA, then Minister for Foreign Affairs, before the Diet on August 25,

1 1932, and the Japanese Government's public statement
2 of September 15, 1932, issued on the occasion of
3 the recognition of 'Manchukuo', which reads in part
4 as follows:

5 'As regards the economic activities of
6 foreigners, the Manchukuo Government made
7 clear in their communication of March 10
8 above alluded to that they would observe
9 the principle of the Open Door. What Japan
10 desires in Manchuria is to do away with all
11 anti-foreign policies there so that the re-
12 gion may become a safe place of abode for
13 natives and foreigners alike, while at the
14 same time, guaranteeing her legitimate
15 rights and interests there; and therefore,
16 it is hardly necessary to repeat the as-
17 surance that Japan sincerely hopes that
18 all the peoples of the world will pursue
19 their economic activities in Manchuria
20 on a footing of equal opportunity and will
21 thereby contribute to the development and
22 prosperity of that region'

23 "The Protocol between Japan and 'Manchukuo' of Sep-
24 tember 15, 1932, itself is predicated upon the ob-
25 servance by 'Manchukuo' of international obligations

1 applying to that territory, as is shown by the second
2 paragraph of the preamble of the Protocol:

3 'Whereas Manchukuo has declared its in-
4 tention of abiding by all international engage-
5 ments entered into by China in so far as they
6 are applicable to Manchukuo.'

7 "It is difficult to see how the Japanese
8 Government can ignore these definite declarations, but
9 that it has done so is not only shown by the excerpt
10 quoted above, etc."
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1 We offer in evidence document No. 219P (22)
2 from exhibit 58, which is an unofficial statement
3 by the Japanese Foreign Office, 17 April, 1934.

4 THE PRESIDENT: Admitted on the usual
5 terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 219P (22) will receive exhibit No. 935.

8 (Whereupon, the document above
9 mentioned was marked prosecution's exhibit
10 No. 935 and received in evidence.)

11 MR. E. WILLIAMS: We read prosecution's
12 exhibit No. 935:

13 "UNOFFICIAL STATEMENT BY THE JAPANESE FOREIGN OFFICE,
14 April 17, 1934

15 "The following is an English translation
16 unofficially issued by the Japanese Foreign Office
17 of the unofficial statement issued by the Foreign
18 Office on April 17, 1934, known as the 'Arai State-
19 ment':

20 "Owing to the special position of Japan in
21 her relations with China, her views and attitude re-
22 specting matters that concern China, may not agree
23 in every point with those of foreign nations: but
24 it must be realized that Japan is called upon to
25 exert the utmost effort in carrying out her mission

1 and in fulfilling her special responsibilities in
2 East Asia.

3 "Japan has been compelled to withdraw from
4 the League of Nations because of their failure to
5 agree in their opinions on the fundamental princi-
6 ples of preserving peace in East Asia. Although Ja-
7 pan's attitude toward China may at times differ from
8 that of foreign countries, such difference cannot be
9 evaded, owing to Japan's position and mission.

10 "It goes without saying that Japan at all
11 times is endeavoring to maintain and promote her
12 friendly relations with foreign nations, but at the
13 same time we consider it only natural that, to keep
14 peace and order in East Asia, we must even act alone
15 on our own responsibility and it is our duty to per-
16 form it. At the same time, there is no country but
17 China which is in a position to share with Japan the
18 responsibility for the maintenance of peace in East
19 Asia. Accordingly, unification of China, preserva-
20 tion of her territorial integrity, as well as re-
21 storation of order in that country, are most ardent-
22 ly desired by Japan. History shows that these can
23 be attained through no other means than the awakening
24 and the voluntary efforts of China herself. We
25 oppose, therefore, any attempt on the part of China

1 to avail herself of the influence of any other
2 country in order to resist Japan: We also oppose
3 any action taken by China, calculated to play one
4 power against another. Any joint operations under-
5 taken by foreign powers even in the name of tech-
6 nical or financial assistance at this particular
7 moment after the Manchurian and Shanghai Incidents
8 are bound to acquire political significance. Under-
9 takings of such nature, if carried through to the
10 end, must give rise to complications that might
11 eventually necessitate discussion of problems like
12 fixing spheres of influence or even international
13 control or division of China, which would be the
14 greatest possible misfortune for China and at the
15 same time would have the most serious repercussion
16 upon Japan and East Asia. Japan, therefore, must ob-
17 ject to such undertakings as a matter of principle,
18 although she will not find it necessary to interfere
19 with any foreign country negotiating individually
20 with China on questions of finance or trade, as long
21 as such negotiations benefit China and are not detri-
22 mental to the maintenance of peace in East Asia.

23 "However, supplying China with war planes,
24 building aerodromes in China and detaching military
25 instructors or military advisors to China or contracting

1 a loan to provide funds for political uses, would
2 obviously tend to alienate the friendly relations
3 between Japan and China and other countries and to
4 disturb peace and order in East Asia. Japan will op-
5 pose such projects.

6 "The foregoing attitude of Japan should be
7 clear from the policies she has pursued in the past.

8 But, on account of the fact that positive movements
9 for joint action in China by foreign powers under
10 one pretext or another are reported to be on foot,
11 it is deemed not inappropriate to reiterate her
12 policy at this time."

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Ambassador

1 We offer in evidence IPS document No.
2 219P(23) from exhibit 58, which is an excerpt from
3 the telegram of Ambassador Grew to the Secretary of
4 State, dated April 25, 1934.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 219P (23) will receive exhibit No. 936.

8 (Whereupon, the document above
9 mentioned was marked prosecution's exhibit
10 No. 936 and received in evidence.)

11 MR. E. WILLIAMS: We read prosecution's
12 exhibit No. 936:

13 "TELEGRAM

14 "THE AMBASSADOR IN JAPAN (GREW) TO THE SECRETARY
15 OF STATE

16 "Excerpt

"Tokyo, April 25, 1934 - 1 p.m.
(Received April 25 - 9:55 a.m.)

17 "75. This morning I had an interview with
18 the Foreign Minister. Mr. HIROTA referred, on his
19 own initiative, to the subject of the Amau statement
20 regarding the attitude of Japan toward foreign assis-
21 tance to China, and said that he wished to clarify
22 that statement to me in confidence. He told me that
23 under questioning by newspaper men, Amau had given
24 out the statement without his knowledge or approval,
25 and that the world had received a wholly false im-

1 pression of Japanese policy, that Japan had no in-
2 tention whatever of seeking special privileges in
3 China, of encroaching upon the territorial and admin-
4 istrative integrity of China, or of creating diffi-
5 culties for the bona fide trade of other countries
6 with China. Various foreign activities have tended
7 to disturb peaceful conditions in China, and Japan is
8 naturally very much interested in those peaceful con-
9 ditions owing to her nearness to China. But that
10 does not mean that there is any intention or desire
11 on the part of Japan to claim a privileged position
12 in derogation of the rights and responsibilities to
13 which the signatories of the Nine-Power Treaty are
14 entitled. The policy of Japan is complete observance
15 and support of the provisions of the Nine-Power Treaty
16 in every respect."

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1 We offer in evidence IPS document No.
2 219P (24) from exhibit 58, which is a memorandum
3 by the Secretary of State Hull, dated at Washington
4 May 19, 1934.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 219P (24) will receive exhibit No. 937.

8 (Whereupon, the document above
9 mentioned was marked prosecution's exhibit
10 No. 937 and received in evidence.)

11 MR. E. WILLIAMS: We read prosecution's
12 exhibit No. 937:

13 "MEMORANDUM BY THE SECRETARY OF STATE

14 (WASHINGTON) May 19, 1934.

15 "The Japanese Ambassador called and
16 promptly drew out an elaborate telegram which
17 he said was from Foreign Minister HIROTA in Tokyo
18 to him. He first remarked that HIROTA desired to
19 extend his appreciation of the friendly spirit in
20 which I sent the Statement to him on April 28, 1934,
21 and which was delivered by United States Ambassador
22 Grew. He added that Ambassador Grew had stated to
23 Minister HIROTA at the time that the United States
24 Government did not expect any reply. The Japanese
25 Ambassador then proceeded practically to read the

1 telegram, although appearing more or less to be
2 speaking orally. He retained the telegram which
3 was in his language. At its conclusion, I inquired
4 if it was virtually a restatement of the statement
5 during the latter part of April of his Government
6 to Sir John Simon in the London Foreign Office.
7 He replied that it was. I then stated that I had
8 kept perfectly quiet while Japanese officials all
9 the way from Tokyo to Geneva on April 17th, and for
10 many days following, were reported as giving out
11 to the press the views and policies of the Japanese
12 Government touching certain international phases
13 relating to the Orient; that at the conclusion of
14 these different statements I felt, in order not
15 to be misunderstood here or anywhere, that I should
16 in a respectful and friendly spirit, offer a succinct
17 but comprehensive restatement of rights, interests,
18 and obligations as they related to my country pri-
19 marily and as they related to all countries signatory
20 to the Nine-Power Treaty, the Kellogg Pact, and
21 international law as the same applied to the Orient.

22 "I then inquired whether the Japanese
23 Government differed with any of the fundamental
24 phases of the statement I sent to the Japanese
25 Foreign Minister on the 28th day of April, 1934."

1 "The Ambassador replied that it did not differ, that
2 his Government did agree to the fundamentals of my
3 note or statement, but that his Government did feel
4 that it had a special interest in preserving peace
5 and order in China. He then repeated the same
6 formula that his government had been putting out
7 for some weeks about the superior duty or function
8 of his government to preserve peace and of its
9 special interest in the peace situation in -- to
10 quote his words -- 'Eastern Asia.' I remarked
11 that, as HIROTA wrote me, I saw no reason whatever
12 why our two countries should not, in the most
13 friendly and satisfactory way to each, solve every
14 question or condition that existed now or that
15 might arise in the future. I then said that, in
16 my opinion, his country could conduct its affairs
17 in such a way that it would live by itself during
18 the coming generations, or that it might conduct
19 its affairs even more profitably and at the same
20 time retain the perfect understanding and the
21 friendship of all civilized nations in particular,
22 that my hope and prayer was that all the civilized
23 nations of the world, including Japan, should work
24 together and in a perfectly friendly and understanding
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1 way so as to promote to the fullest extent the
2 welfare of their respective peoples and at the same
3 time meet their duties to civilization and to the
4 more backward population of the world, and that
5 my Government would always be ready and desirous
6 of meeting his Government fully half-way in pur-
7 suing these latter objectives.

8 "I then remarked that I would be entirely
9 frank by saying that just now there was considerable
10 inquiry everywhere as to just why his government
11 singled out the clause or formula about Japan's
12 claiming superior and special interests in the
13 peace situation in 'Eastern Asia' and her superior
14 rights or duties in connection with the preservation
15 of peace there; and that many were wondering whether
16 this phrase or formula had ulterior or ultimate
17 implications partaking of the nature of an over-
18 lordship of the Orient or a definite purpose to
19 secure preferential trade rights as rapidly as
20 possible in the Orient or 'Eastern Asia' -- to
21 use the Japanese expression. The Ambassador
22 commenced protesting that this was not the meaning
23 contemplated or intended. I said it would be much
24 simpler and easier if, when the national of any other
25 government engaged in some act in the Orient which

1 Japan might reasonably feel would affect her un-
2 satisfactorily, to bring up the individual cir-
3 cumstance to the proper government, instead of
4 issuing a blanket formula which would cause nations
5 everywhere to inquire or surmise whether it did not
6 contemplate an overlordship of the Orient and an
7 attempt at trade preferences as soon as possible.
8 The Ambassador again said that this so-called
9 formula about the superior interests of Japan
10 in preserving peace, etc., did not contemplate
11 the interference or domination or overlordship
12 such as I had referred to.

13 "I stated that today there was universal
14 talk and plans about armaments on a steadily in-
15 creasing scale and that Japan and Germany were the
16 two countries considered chiefly responsible for
17 that talk; that, of course, if the world understood
18 the absence of any overlordship intentions or other
19 unwarranted interference by his government, as the
20 Ambassador stated them to me, his country would
21 not be the occasion for armament discussion in so
22 many parts of the world; and that this illustrated
23 what I had said at the beginning of our conversation
24 that nations should make it a special point to under-
25 stand each other, and the statesmen of each country

1 should be ready at all times to correct or explain
2 any trouble-making rumors or irresponsible or in-
3 accurate statements calculated to breed distrust
4 and misunderstanding and lukewarmness between nations.
5 I went on to say that it was never so important for
6 the few existing civilized countries of the world to
7 work whole-heartedly together; and that this action,
8 of course, would, more fully than any other, promote
9 the welfare of the people of each and also would
10 best preserve civilization. I emphasized again
11 that it would be the height of folly for any of the
12 civilized nations to pursue any line of utterances
13 of professed policies that would engender a feeling
14 of unfairness or treaty violation or other unsatis-
15 factory reaction in the important nations who might
16 have both rights and obligations in a given part
17 of the world such as the Orient. I said that in
18 this awful crisis through which the world was
19 passing, debtors everywhere were not keeping faith
20 with creditors in many instances; that sanctity of
21 treaties, in Western Europe especially, was being
22 ignored and violated; that this was peculiarly a
23 time when our civilized countries should be espec-
24 ially vigilant to observe and preserve both legal
25 and moral obligations; and that my country especially

1 felt that way, not only on its own account but
2 for the sake of preserving the better and the
3 higher standards of both individual and national
4 conduct everywhere.

5 "I remarked that my Government, apart
6 from its general treaty obligations, was only
7 interested in the equality of trade rights in
8 the Orient as in every part of the world and also
9 its obligations and rights under the law of nations;
10 that what little trade we had in the Orient we
11 naturally desired to conduct on this basis of
12 equality, even though it might be less in the
13 future than now. Then I remarked that if these
14 treaties which imposed special obligations on my
15 government in the Orient were not in existence
16 that, while interested in peace in all parts of
17 the world, my government would also be interested
18 in equality of trade rights.

19 "I inquired whether his government had
20 any disposition to denounce and get rid of these
21 treaties in whole or in part, and said that to
22 ignore or violate them would be embarrassing to
23 my government, and that this would relieve it of
24 any possibilities of such embarrassment. I said
25 that I was not remotely suggesting in the matter."

1 " He replied that his government was not disposed
2 to denounce and abrogate these treaties. He said
3 that they felt obliged to get out of the League of
4 Nations on account of certain considerations which
5 their membership created. I then inquired of him
6 whether his government abandoned membership on
7 account of difficulties arising from the fact that
8 Japan was a member of the League or whether it was
9 due to Japan being a signatory to the Versailles
10 Treaty. I did not get a complete answer to this.

11 "The Ambassador then stated that in any
12 preliminary naval conversations that might soon
13 take place, his government would be opposed to
14 discussing any Far Eastern political or similar
15 questions or conditions and that only the purely
16 naval side should be taken up. He said that polit-
17 ical and all other phases of the subject were
18 discussed at the Washington Conference and his
19 government was opposed to a repetition of this.
20 I offered no comment.

21 "C(ORDELL) H(ULL)"
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1 We offer in evidence IPS document No.
2 219P (25) from exhibit 58, which is a statement of
3 the Secretary of State, dated September 25, 1935.

4 THE PRESIDENT: Admitted on the usual
5 terms.

6 CLERK OF THE COURT: Prosecution's exhibit
7 No. 219P (25) will receive exhibit No. 938.

8 (Whereupon, the document above
9 mentioned was marked prosecution's exhibit
10 No. 938 and received in evidence.)

11 MR. E. WILLIAMS: We read prosecution's
12 exhibit No. 938:

13 "STATEMENT BY THE SECRETARY OF STATE"

14 The footnote is to the effect that it was
15 issued as a press release December 5, 1935 for publi-
16 cation in the morning newspapers of December 6, 1935.

17 "In reply to inquiries by press and corres-
18 pondents in regard to the 'autonomy movement' in North
19 China, Chinese and Japanese activities in relation
20 thereto, and the American Government's attitude, the
21 Secretary of State said:

22 "There is going on in and with regard to North
23 China a political struggle which is unusual in charac-
24 ter and which may have far-reaching effects. The persons
25 mentioned in reports of it are many; the action is rapid

1 and covers a large area; opinions with regard to it
2 vary; what may come of it no one could safely under-
3 take to say; but, whatever the origin, whoever the
4 agents, be what they may the methods, the fact stands
5 out that an effort is being made--and is being resis-
6 ted--to bring about a substantial change in the poli-
7 tical status and condition of several of China's
8 northern provinces.

9 "Unusual developments in any part of China
10 are rightfully and necessarily of concern not alone
11 to the Government and people of China but to all of the
12 many powers which have interests in China. For, in re-
13 lations with China and in China, the treaty rights and
14 the treaty obligations of the 'treaty powers' are in
15 general identical. The United States is one of those
16 powers.

17 "In the area under reference the interests
18 of the United States are similar to those of other
19 powers. In that area there are located, and our rights
20 and obligations appertain to, a considerable number of
21 American nationals, some American property, and sub-
22 stantial American commercial and cultural activities.
23 The American Government is, therefore, closely observ-
24 ing what is happening there.

25 "Political disturbances and pressures give rise

1 to uncertainty and misgiving and tend to produce
2 economic and social dislocations. They make diffi-
3 cult the enjoyment of treaty rights and the fulfill-
4 ment of treaty obligations.

5 "The views of the American Government with
6 regard to such matters not alone in relation to China
7 but in relation to the whole world are well known. As
8 I have stated on many occasions, it seems to this
9 Government most important in this period of world-wide
10 political unrest and economic instability that govern-
11 ments and peoples keep faith in principles and pledges.
12 In international relations there must be agreements
13 and respect for agreements in order that there may be
14 the confidence and stability and sense of security which
15 are essential to orderly life and progress. This coun-
16 try has abiding faith in the fundamental principles of
17 its traditional policy. This Government adheres to the
18 provisions of the treaties to which it is a party and
19 continues to bespeak respect by all nations for the
20 provisions of treaties solemnly entered into for the
21 purpose of facilitating and regulating, to reciprocal
22 and common advantage, the contracts between and among
23 the countries signatory."
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1 We offer in evidence prosecution's document
2 No. 219P (18) from exhibit 58, which is from the
3 American Embassy to Japanese Foreign Ministry,
4 November 30, 1934.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 219P (18) will receive exhibit No. 939.

8 (Whereupon, the document above
9 mentioned was marked prosecution's exhibit
10 No. 939 and received in evidence.)

11 MR. E. WILLIAMS: We read prosecution's
12 exhibit No. 939:

13 "THE AMERICAN EMBASSY IN JAPAN TO THE JAPANESE
14 MINISTRY FOR FOREIGN AFFAIRS
15 "AIIDE-MEMOIRE

16 "Excerpt

17 "With particular reference to the Foreign
18 Office memorandum of November 5 the American Govern-
19 ment finds unconvincing the statement as contained
20 therein that the proposed control of the oil industry
21 in Manchuria is not within the knowledge or concern of
22 the Japanese Government. The American Government must
23 of necessity assume that a project of such major im-
24 portance to all concerned and one with regard to which
25 Japanese interests including a quasi-official organiza-

1 tion apparently are taking so active and so prominent
2 a part can not escape either the knowledge or the con-
3 cern of the Japanese Government. Likewise for obvious
4 reasons the American Government can not accept the im-
5 plied disclaimer of responsibility on the part of Japan
6 in relation to the industrial policy in Manchuria of
7 which this project is a manifestation.

8 "The American Government does not wish nor
9 does it believe that the Japanese Government would wish
10 to enter into controversy over the details of the pro-
11 ject under discussion. The American Government feels,
12 however, that it must call to the attention of the
13 Japanese Government for that Government's most care-
14 ful consideration certain facts and conclusions to which
15 the American Government attaches great importance, name-
16 ly, that there is proposed the setting up in Manchuria
17 of a control of the petroleum industry which, by what-
18 soever means attained and whatever called, would in
19 fact constitute a monopoly of the sale and distribu-
20 tion of oil in that area; that the creation of such
21 a monopoly would impinge upon treaty rights which
22 rights the authorities in Manchuria have affirmed to
23 the world they would respect and maintain, an affirma-
24 tion which the Japanese Government accepted and adopted
25 in the protocol into which it entered with those author-

1 ities; that an oil monopoly and, in fact any monopoly
2 would in addition constitute a violation of Article
3 III of the Nine-Power Treaty to which both Japan and
4 the United States are co-signatories. The creation
5 of such a monopoly would adversely affect legitimate
6 American interests long established in that region.
7 Perseverance in this project by its promoters and
8 indifference by the Japanese Government to that devel-
9 opment and its consequences would tend to place at
10 naught the emphatic and unconditional assurances re-
11 peatedly made by the Japanese Government of its de-
12 votion to the maintenance in Manchuria of the princi-
13 ple of the open door."
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1 We offer in evidence IPS document No.
2 219P (16) from exhibit 58, an excerpt, from Langdon,
3 the Consul at Mukden, to the Ambassador in China,
4 dated October 30, 1937.

5 THE PRESIDENT: Admitted on the usual
6 terms.

7 CLERK OF THE COURT: Prosecution's document
8 No. 219P (16) will receive exhibit No. 940.

9 (Whereupon, the document above
10 mentioned was marked prosecution's exhibit
11 No. 940 and received in evidence.)

12 MR. E. WILLIAMS: Reading prosecution's
13 exhibit No. 940:

14 "THE CONSUL AT MUKDEN (LANGDON) TO THE
15 AMBASSADOR IN CHINA (JOHNSON)

16 "Mukden, October 30, 1937.

17 "No. 158

18 "For Mr. OHASHI's ready reference Mr. Langdon
19 cited some of the many declarations made by Hsinking
20 promising to maintain the Open Door in Manchuria, namely:

21 "The passage dealing with foreign policies,
22 in the Proclamation on the establishment of the State,
23 March 1, 1932;

24 "The telegram of Foreign Minister Hsieh to
25 the Secretary of State of the United States, March 12,

1 1932, in particular paragraph 7, reading as follows:
2 'With regard to economic activities of peoples of
3 foreign nations within the state of Manchuria, the
4 principle of the Open Door shall be observed';

5 "The statement of Foreign Minister Hsieh on
6 the occasion of the signing of the Manchukuo-Japan
7 Protocol of September 15, 1932;

8 "The telegram of congratulation of November
9 12, 1932, by Foreign Minister Hsieh on the occasion
10 of the election of President Roosevelt;

11 "Statement given to United Press representa-
12 tives in Tokyo by the Manchukuo Foreign Office (see
13 Bureau of Information and Publicity, Department of
14 Foreign Affairs, Bulletin No. 60, May 4, 1933);

15 "Statement for foreign countries issued March
16 1, 1934, by Foreign Minister Hsieh on the Occasion
17 of the enthronement of the Emperor, reaffirming the
18 undertaking to maintain the Open Door announced March
19 1, 1932, on the occasion of the establishment of the
20 State.

21 "Mr. Langdon expressed to Mr. OHASHI his deep
22 regret that the statutes of Manchukuo now placed dis-
23 criminatory restrictions on the commercial relations
24 of his country with Manchuria and requested that Mr.
25 OHASHI communicate to the proper authorities the

1 unfavorable impression which such restrictions were
2 making in the United States, which treats the trade
3 of all countries, including Manchuria, alike."
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1 THE PRESIDENT: We will adjourn until
2 half past one.

3 (Whereupon, at 1200, a recess was
4 taken.)

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AFTERNOON SESSION

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The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Next Monday being a public holiday, as decreed by the Supreme Commander, there will be no sittings of this Court on that day.

Mr. Williams.

MR. E. WILLIAMS: We offer in evidence IPS document 219P (19) from exhibit 58, Oral Statements by the American Ambassador in Japan (Grew) to the Japanese Minister for Foreign Affairs (HIROTA), April 16, 1935.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: IPS document No. 219P (19) will receive exhibit No. 941.

(Whereupon, the document above referred to was marked prosecution's exhibit No. 941 and received in evidence.)

MR. E. WILLIAMS: We will read prosecution's exhibit No. 941:

"ORAL STATEMENTS BY THE AMERICAN AMBASSADOR IN JAPAN (GREW) TO THE JAPANESE MINISTER FOR FOREIGN

1 AFFAIRS (HIROTA). (TOKYO, April 16, 1935.)

2 "1. The creation of the oil monopoly in Man-
3 churia, and the part played therein by Japanese
4 nationals and interest, will have a deplorable effect
5 upon public opinion in the United States, which re-
6 gards the monopoly and Japanese participation therein
7 as clear breaches of treaty obligations.

8 "2. The American companies selling oil in Man-
9 churia have been engaged in good faith in the oil
10 business for many years and have built up their busi-
11 ness with the expenditure of much thought, energy
12 and money. During all of this time they have main-
13 tained supplies sufficient to carry on the business
14 uninterruptedly, and there is no record, so far as
15 the Embassy is aware, of their having engaged in
16 practices that were unfair to their clients or de-
17 trimental in any way to the best interests of Man-
18 churia. The destruction, through the operation of
19 the Monopoly, of this business and the good will so
20 carefully built up over a long period of years, and
21 the throwing of this business in large part into
22 Japanese hands, will appear to the American public to
23 be a most inequitable proceeding.

24 "3. The Japanese Government disclaims respon-
25 sibility for measures taken by the authorities in

1 Manchuria in establishing the monopoly on the ground
2 that they are acts of a state recognized by Japan as
3 sovereign and independent. Nevertheless the peculiar
4 relations and undoubted influence of Japan with those
5 authorities have been fully demonstrated in other
6 recent issues. This inconsistency is certain to
7 affect adversely American opinion of the good faith
8 and sincerity of the Japanese contentions in the
9 present issue.

10 "4. The American oil interests are being de-
11 prived of a business which they have been lawfully
12 conducting for many years, on the ground, among
13 others, of national defense, for which the Japanese
14 Government insists it has responsibility. If the
15 principle of national defense is involved, therefore,
16 it would seem that Japan can not dissociate itself
17 from the monopoly project. On the other hand, if
18 the monopoly project is purely a commercial question,
19 or is concerned solely with economic policy, it would
20 appear to be eminently fitting for Japan to associate
21 itself with other nations to assist in maintaining
22 the principle of equality of commercial opportunity
23 in Manchuria."

24 We offer in evidence IPS document 219P (26)
25 from exhibit 58, which is a letter from Japanese

1 Ambassador SAITO to the Secretary of State in Wash-
2 ington, December 29, 1934.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Prosecution's document
5 No. 219P (26) will receive exhibit No. 942.

6 (Whereupon, the document above re-
7 ferred to was marked prosecution's exhibit
8 No. 942 and received in evidence.)

9 MR. E. WILLIAMS: Reading prosecution's
10 exhibit No. 942:

11 "THE JAPANESE AMBASSADOR (SAITO) TO THE
12 SECRETARY OF STATE. WASHINGTON, December 29, 1934.

13 "SIR: I have the honor, under instructions from
14 my Government, to communicate to you the following:-

15 "In accordance with Article XXIII of the Treaty
16 concerning the Limitation of Naval Armament, signed at
17 Washington on the 6th February, 1922, the Government
18 of Japan hereby give notice to the Government of the
19 United States of America of their intention to ter-
20minate the said Treaty, which will accordingly cease
21to be in force after the 31st December, 1936.

22 "Accept (etc.). SAITO."

23 We offer in evidence IPS document No. 219P
24 (27) from exhibit 58, which is excerpt from telegram
25 by Davis, Chairman of the American Delegation to the

1 Naval Disarmament Conference in London to the Sec-
2 retary of State, January 15, 1936.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Prosecution's document
5 No. 219P (27) will receive exhibit No. 943.

6 (Whereupon, the document above re-
7 ferred to was marked prosecution's exhibit No.
8 943 and received in evidence.)

9 MR. E. WILLIAMS: We read prosecution's
10 exhibit 943:

11 "TELEGRAM. THE CHAIRMAN OF THE AMERICAN DELE-
12 GATION (DAVIS) TO THE SECRETARY OF STATE. (Excerpt.)

13 "The United States has been most desirous of
14 reaching a new agreement for a reduction and limita-
15 tion of naval armaments to supersede the existing
16 treaties that are to expire at the end of this year. We
17 have, therefore, been willing to discuss any proposals
18 and to explore every possibility of agreement. We have
19 been willing to consider any evidence that might have
20 been presented to the effect that the present re-
21 lative strengths are not fair and equitable and do
22 not provide for equal security.

23 "We have accordingly listened with the most
24 careful attention to all the explanations given by the
25 Japanese delegation of their proposal for a common

1 upper level with a view to determining whether any new
2 facts or considerations might be developed which
3 would justify the United States in modifying its
4 belief that the principles of the common upper limit
5 would not be a practicable basis for the limitation
6 and reduction of naval armament. While we greatly
7 appreciate the clear exposition of the Japanese point
8 of view presented by Admiral NAGANO, the discussion
9 has if anything served to strengthen our conviction
10 that the principle of a common upper limit would not
11 serve as a basis for negotiation and agreement."

12 We offer in evidence IPS document 219P (20)
13 from exhibit 58, which is a message from Ambassador
14 Grew to Japanese Foreign Minister HIROTA, dated
15 December 1, 1937.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution's document
18 No. 219P (20) will receive exhibit No. 944.

19 (Whereupon, the document above re-
20 ferred to was marked prosecution's exhibit No.
21 944 and received in evidence.)

22 MR. E. WILLIAMS: Reading prosecution's ex-
23 hibit No. 944:

24 "THE AMERICAN AMBASSADOR IN JAPAN (GREW) TO THE
25 JAPANESE MINISTER FOR FOREIGN AFFAIRS (HIROTA). TOKYO,

1 December 1, 1937.

2 "EXCELLENCY: Acting under the instructions of
3 my Government I have the honor to refer to reports
4 that on November 1 (5?) a treaty was signed with
5 Japan ending Japanese extraterritorial rights in
6 Manchuria and that on this account there was issued
7 a manifesto in regard to the extraterritorial rights
8 of foreigners other than Japanese in Manchuria. It
9 has also been brought to the attention of my Govern-
10 ment that the branch at Harbin of the National City
11 Bank of New York, an American concern, has received
12 a letter from the Department of Economics at Hsinking
13 stating that a recently promulgated 'law concerning
14 foreign juridical persons' 'naturally' applies to all
15 foreign firms and requesting that preparation be
16 made to register and to appoint a representative
17 in accordance with the law. The extraterritorial
18 rights of nationals of the United States in Manchuria
19 are granted by treaties between the United States and
20 China and my Government considers that the law under
21 reference which apparently contemplates the assertion
22 by the authorities in Manchuria of jurisdiction over
23 American juridical persons is inapplicable to American
24 nationals and firms. My Government, therefore, is
25 impelled to register emphatic objection to any attempt

1 by the authorities of Manchuria to exercise jurisdic-
2 tion over American nationals and to make full re-
3 servation in regard to the treaty rights of the United
4 States and its citizens.

5 "I am directed by my Government to address the
6 Japanese Government on this matter in view of the
7 relationship between the Japanese Government and the
8 authorities in Manchuria.

9 "I avail myself, (etc.) JOSEPH C. GREW."

10 We offer in evidence IPS document No. 219P
11 (28) from exhibit 58, a message from NAGANO, Chairman
12 of the Japanese Delegation, to the Chairman of the
13 Conference (Monsell) in London, dated January 15, 1936.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Prosecution's document
16 No. 219P (28) will receive exhibit No. 945.

17 (Whereupon, the document above re-
18 ferred to was marked prosecution's exhibit No.
19 945 and received in evidence.)

20 MR. E. WILLIAMS: We read prosecution's
21 exhibit No. 945:

22 "THE CHAIRMAN OF THE JAPANESE DELEGATION
23 (NAGANO) TO THE CHAIRMAN OF THE CONFERENCE (MONSELL).
24 (LONDON,) January 15, 1936.

25 "MY LORD, I have the honour hereby to notify

1 "Your Lordship that as it has become sufficiently
2 clear at today's session of the First Committee that
3 the basic principles embodied in our proposal for a
4 comprehensive limitation and reduction of naval ar-
5 maments cannot secure general support, our Delegation
6 have now come to the conclusion that we can no longer
7 usefully continue our participation in the delibera-
8 tions of the present Conference.

9 "We remain, nevertheless, firmly convinced that
10 our proposal is one best calculated to attain an
11 effective disarmament, and we regret to state that
12 we cannot subscribe, for the reasons we have re-
13 peatedly set forth, to the plans of quantitative
14 limitation submitted by the other Delegations.

15 "I desire to assure you, on this occasion, that
16 we most sincerely appreciate the cordial manner in
17 which you have been good enough to conduct the Con-
18 ference; at the same time, I should like to tender
19 our deepest thanks on behalf of our Delegation, for
20 the hearty co-operation of all the Delegations to
21 this conference.

22 "I have (etc.). OSAMI NAGANO."
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1 MR. E. WILLIAMS: We now present in evidence
2 IPS document No. 219P (29), from Exhibit 58, which is
3 an excerpt from a telegram from Ambassador Grew in Tokyo
4 to the Secretary of State, dated June 18, 1937.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 219P (29) will receive exhibit No. 946.

8 (Whereupon, the document above referred
9 to was marked prosecution's exhibit No. 946 and
10 received in evidence.)

11 MR. EM WILLIAMS: We read prosecution's exhibit
12 No. 946:

13 "Telegram.

14 "The Ambassador in Japan (Grew) to the Secre-
15 tary of State.

16 "Tokyo, June 18, 1937.

17 "While the limitation of the gun calibre for capital
18 ships constitutes one important aspect of qualitative
19 limitation, the Japanese Government, in elucidating
20 at the last London Naval Conference their basic atti-
21 tude concerning the means calculated to bring about just
22 and fair state of naval disarmament, made it clear that
23 they could not subscribe to qualitative limitations
24 alone, if not accompanied by a simultaneous restric-
25 tion in quantity. The Japanese Government still hold

1 the same conviction as regards the matter of qualita-
2 tive limitations. Stated briefly, it is their belief
3 that a mere limitation in quality alone will only in-
4 duce a tendency to make up for the deficiency caused
5 through such limitation, by resorting to quantitative
6 augmentation, thus ultimately leading to a competition
7 in naval armament in quantity. The Japanese Government,
8 therefore, are not, at this juncture, in a position to
9 adopt, apart from quantitative restrictions, a mere
10 limitation of the gun calibre for capital ships, a
11 matter which properly belongs to the most important
12 phase of qualitative limitation and hope that the United
13 States Government will understand the above-mentioned
14 position of the Japanese Government.

15 "It may be added for the information of the
16 United States Government that this position of the
17 Japanese Government as regards qualitative limitation
18 was communicated towards the end of March to the British
19 Government, when the Japanese Government responded to
20 the British proposal of January this year regarding
21 the limitation to fourteen inches of the maximum calibre
22 of guns for capital ships.

23 "June 18, 1937.

24 "Grew."

25 We present in evidence IPS document No. 219P(31)

from exhibit 58, statement by the Secretary of State
dated July 16, 1937.

1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Prosecution's document
3 No. 219P (31) will receive exhibit No. 947.

4 (Whereupon, the document above referred
5 to was marked prosecution's exhibit No. 947 and
6 received in evidence.)

7 MR. E. WILLIAMS: Reading prosecution's ex-
8 hibit No. 947:

9 "Statement by the Secretary of State."

10 This was issued as a press release on July 16,
11 1937; reprinted from Department of State, Press Releases,
12 July 17, 1937.

13 "I have been receiving from many sources in-
14 quiries and suggestions arising out of disturbed situ-
15 ations in various parts of the world.

16 "Unquestionably there are in a number of regions
17 tensions and strains which on their face involve only
18 countries that are near neighbors but which in ultimate
19 analysis are of inevitable concern to the whole world.
20 Any situation in which armed hostilities are in pro-
21 gress or are threatened is a situation wherein rights
22 and interests of all nations either are or may be serious-
23 ly affected. There can be no serious hostilities
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1 anywhere in the world which will not one way or another
2 affect interests or rights or obligations of this
3 country. I, therefore, feel warranted in making -- in
4 fact, I feel it a duty to make -- a statement of this
5 Government's position in regard to international pro-
6 blems and situations with respect to which this country
7 feels deep concern.

8 "This country constantly and consistently ad-
9 vocates maintenance of peace. We advocate national
10 and international self-restraint. We advocate abstin-
11 nence by all nations from use of force in pursuit of
12 policy and from interference in the internal affairs
13 of other nations. We advocate adjustment of problems
14 in international relations by processes of peaceful
15 negotiation and agreement. We advocate faithful ob-
16 servance of international agreements. Upholding the
17 principle of the sanctity of treaties, we believe in
18 modification of provisions of treaties, when need there-
19 for arises, by orderly processes carried out in a spirit
20 of mutual helpfulness and accommodation. We believe
21 in respect by all nations for the rights of others and
22 performance by all nations of established obligations.
23 We stand for revitalizing and strengthening of inter-
24 national law. We advocate steps toward promotion of
25 economic security and stability the world over. We

1 advocate lowering or removing of excessive barriers in
2 international trade. We seek effective equality of
3 commercial opportunity and we urge upon all nations
4 application of the principle of equality of treatment.
5 We believe in limitation and reduction of armament.
6 Realizing the necessity for maintaining armed forces
7 adequate for national security, we are prepared to
8 reduce or to increase our own armed forces in propor-
9 tion to reductions or increases made by other countries.
10 We avoid entering into alliances or entangling commit-
11 ments but we believe in cooperative effort by peaceful
12 and practicable means in support of the principles,
13 hereinbefore stated."

14 THE PRESIDENT: Mr. Hardin.

15 MR. HARDIN: We offer in evidence IPS document
16 No. 219P (30) from exhibit 58 which is an excerpt from
17 memorandum by the Secretary of State in Washington
18 dated June 12, 1936.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Prosecution's document
21 No. 219P (30) will receive exhibit No. 948.

22 (Whereupon, the document above referred
23 to was marked prosecution's exhibit No. 948 and
24 received in evidence.)

25 MR. HARDIN: (Reading)

1 "Memorandum by the Secretary of State.

2 "Washington, June 12, 1936.

3 "Excerpt.

4 "In reply, I told Mr. YOSHIDA that I would
5 speak frankly but in the friendliest possible spirit
6 and say that the impression among many persons in this
7 country was that Japan sought absolute economic domin-
8 ation, first of Eastern Asia, and then, of other por-
9 tions as she might see fit; that this would mean political
10 as well as military domination in the end; that the up-
11 shot of the entire movement would be to exclude countries
12 like the United States from trading with all of those
13 portions of China thus brought under the domination or
14 controlling influence so-called of Japan; that this
15 presented a serious question to first-class countries
16 with commercial interests in every part of the world,
17 for the reason that, for instance, my country stood
18 unqualifiedly for the principle of equality of commercial
19 opportunity and industrial right alike in every part
20 of the world; and that it would be strange and imprac-
21 ticable for my country to stand for this doctrine with
22 the announcement always that it qualified same by apply-
23 ing it to only one-half of the world and one-half of
24 the world's population. I remarked that I could say
25 in all candor that this Government had never by the

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or Great Britain, or Japan, or
"I continued with the sta
no reason, in my judgment, why coun
the United States and England, could n
amicable spirit, and with perfect justic
to each, agree to assert and abide by the
principle of equality in all commercial and
affairs, and each country solemnly agree that
not resort to force in connection with the operat
of this rule of equality and Governments like the t
mentioned could not sit down together and in a spirit
of fair dealing and fair play confer and collaborate
and not cease until they had found a way for amicable
and reasonable adjustments or settlements. I said that
this would wipe out and eliminate 90% of all the
occasions for friction between the nations.
"Cordell Hull."

We present in evidence IPS document No.
219P (32) from exhibit 58, a memorandum by the Secretary
of State, Hull, in Washington, dated July 21, 1937.
THE PRESIDENT: Admitted on the usual terms.
CLERK OF THE COURT: Prosecution's document

1 slightest word or intimation suggested to the people
2 or officials of the 20 Latin American countries as to
3 what amount of trade they should conduct with Germany,
4 or Great Britain, or Japan, or any other country.

5 "I continued with the statement that there was
6 no reason, in my judgment, why countries like Japan,
7 the United States and England, could not in the most
8 amicable spirit, and with perfect justice and fairness
9 to each, agree to assert and abide by the worldwide
10 principle of equality in all commercial and industrial
11 affairs, and each country solemnly agree that it would
12 not resort to force in connection with the operation
13 of this rule of equality and Governments like the three
14 mentioned could not sit down together and in a spirit
15 of fair dealing and fair play confer and collaborate
16 and not cease until they had found a way for amicable
17 and reasonable adjustments or settlements. I said that
18 this would wipe out and eliminate 90% of all the
19 occasions for friction between the nations.

20 "Cordell Hull."

21 We present in evidence IPS document No.
22 219P (32) from exhibit 58, a memorandum by the Secretary
23 of State, Hull, in Washington, dated July 21, 1937.

24 THE PRESIDENT: Admitted on the usual terms.

25 CLERK OF THE COURT: Prosecution's document

1 No. 219P (32) will receive exhibit No. 949.

2 (Whereupon, the document above referred
3 to was marked prosecution's exhibit No. 949 and
4 received in evidence.)

5 MR. HARDIN: We read prosecution's exhibit
6 No. 949:

7 "Memorandum by the Secretary of State.

8 "Washington, July 21, 1937.

9 "The Ambassador of Japan called this morning
10 at my request. After brief preliminaries, I very
11 seriously addressed the Ambassador and said that, of
12 course, he must be fully aware that when two nations
13 comprising 500 million people are engaged in a contro-
14 versy in which danger of general hostilities appear
15 imminent this country cannot help but be greatly inter-
16 ested and concerned; that it is in the light of this
17 situation and of the intense desire of this country for
18 peace everywhere that I have been undertaking to confer
19 with the ambassadors from both Japan and China from
20 time to time regarding developments, present and pros-
21 pective, in the danger zone; that I have approached
22 each government, in a spirit of genuine friendliness
23 and impartiality in an earnest effort to contribute
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1 something to the cause of peace and to the avoidance
2 of hostilities in the Far East; that, if the Ambassador
3 did not mind, I would be glad to reemphasize the chief
4 points I had referred to in our previous conversations
5 on this general subject and situation; that these in-
6 cluded a most earnest appeal to each government, from
7 every possible standpoint, for peace, as well as an
8 earnest expression of the opinion that a war would
9 result in irreparable harm to all governments involved
10 and would prove utterly disastrous, in the present
11 chaotic state of world affairs, to all phases of human
12 welfare and human progress . . .

13 "I then said to the Ambassador that I might
14 repeat what I had also said to him at the beginning --
15 that this government is ready and will be most glad at
16 any time to say or do anything, short of mediation
17 which of course requires the agreement of both parties
18 in advance, which might in any way whatever contribute
19 towards composing the present matters of controversy
20 between Japan and China; that this was, of course, said
21 to the Ambassador for his Government; and I added that I
22 desired to repeat with emphasis the present, continued
23 attitude of this government of thus being ready and
24 desirous of saying or doing anything that the govern-
25 ment or governments concerned might suggest which would

1 be fair and impartial towards all concerned and at the
2 same time calculate to be helpful in restoring thorough-
3 ly peaceful relations in the Far East."
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1 genuinely friendly and impartial towards his country
2 and all concerned I would not be saying some of the
3 things I was saying.

4 "During the course of the conversation, I
5 remarked that I desired to refer specially to an in-
6 cident of the past two days in which two American
7 women, near their embassy in Peking, were assaulted
8 by Japanese guards. I said that I had remarked to
9 the press, off the record, on yesterday that I had
10 only received newspaper information about this attack
11 upon the American women and I could not comment upon
12 it with accuracy until official information came to
13 me; that in the meantime I assumed and hoped that
14 our Embassy in Peking would take the matter up with
15 the Japanese Government and a settlement, or adjust-
16 ment, or action satisfactory to all concerned would
17 be brought about. The Ambassador expressed his
18 favorable interest in such action and also his be-
19 lief that such would be the case. Dr. Hornbeck,
20 who was present, remarked to the Ambassador that
21 similar incidents relating to our nationals or the
22 nationals of other governments have occurred during
23 the past five years and that it would be very help-
24 ful to the reputation of the Japanese Government
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1 to see to it that their guards would deport and de-
2 mean themselves in a way to avoid such occurrences.
3 The Ambassador expressed his approval.

4 "C(ORDELL) H(ULL)."
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1 Offering now in evidence IPS document 219P(33)
2 from exhibit 58, which is an excerpt from memorandum
3 of Ambassador Grew in Tokyo, dated August 10, 1937.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Prosecution's document
6 No. 219P(33) will receive exhibit No. 950.

7 (Whereupon, the document above
8 referred to was marked prosecution's
9 exhibit No. 950, and was received in
10 evidence.)

11 MR. HARDIN: We now read prosecution's ex-
12 hibit No. 950:

13 "Memorandum by the Ambassador in Japan (Grew)

14 "(Tokyo) August 10, 1937

15 "American Offer of Good Offices.

16 "2. I then referred to the statement which I
17 had made to the Minister in our last conversations as
18 on my own initiative and responsibility, that I
19 hoped he would let me know if he ever saw ways in
20 which I could be helpful in the present situation.
21 I said that my Government had now authorized me to
22 present this as a definite offer of good offices and
23 that I was doing so in an informal, confidential and
24 exploratory way, first because it seemed to me im-
25 portant to avoid publicity, and second because we

1 wished to avoid any semblance of interference and
2 were only anxious to be as helpful as possible. I
3 repeated and emphasized this aspect of my remarks so
4 that there could be no doubt in the Minister's mind
5 as to our precise attitude and intentions. I then
6 said that it had occurred to us that either now or
7 later it might be helpful for us to arrange some
8 neutral ground for a meeting of Japanese and Chinese
9 plenipotentiaries to conduct negotiations and perhaps
10 to be helpful if difficulties in those negotiations
11 should arise.

12 "J(OSEPH) C. G(REW)"

13 Entering in evidence IPS document 219P(34)
14 from exhibit 58. This is from the Japanese Embassy in
15 Washington to the Department of State, dated August
16 13, 1937.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Prosecution's document
19 No. 219P(34) will receive exhibit No. 951.

20 (Whereupon, the document above refer-
21 red to was marked prosecution's exhibit
22 No. 951, and was received in evidence.)

23 MR. HARDIN: Reading prosecution's exhibit
24 No. 951 in evidence;
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1 "The Japanese Embassy to the Department of
2 State.

3 "The Japanese Government wishes to express
4 its concurrence with the principles contained in the
5 statement made by Secretary of State Hull on the
6 16th instant (ultimo) concerning the maintenance of
7 world peace. It is the belief of the Japanese Govern-
8 ment that the objectives of those principles will only
9 be attained, in their application to the Far Eastern
10 situation, by a full recognition and practical consider-
11 ation of the actual particular circumstances of that
12 region.

13 "(Washington), August 13, 1937."

14 Tendering IPS document 219P(35) from exhi-
15 bit 58, in evidence. This is excerpt from press
16 release issued by the Department of State, Washington,
17 August 23, 1937.

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Prosecution's document
20 No. 219P(35) will receive exhibit No. 952.

21 (Whereupon, the document above referred
22 to was marked prosecution's exhibit No. 952,
23 and was received in evidence.)

24 MR. HARLIN: Reading prosecution exhibit
25 No. 952 in evidence:

1 "Press Release Issued by the Department of
2 State on August 23, 1937.

3 "The issues and problems which are of concern
4 to this Government in the present situation in the
5 Pacific area go far beyond merely the immediate ques-
6 tion of protection of the nationals and interests of
7 the United States. The conditions which prevail in
8 that area are intimately connected with and have a
9 direct and fundamental relationship to the general
10 principles of policy to which attention was called in
11 the statement of July 16, which statement has evoked
12 expressions of approval from more than 50 governments.
13 This Government is firmly of the opinion that the
14 principles summarized in that statement should effect-
15 ively govern international relationship.

16 "When there unfortunately arises in any part
17 of the world the threat or the existence of serious
18 hostilities, the matter is of concern to all nations.
19 Without attempting to pass judgment regarding the merits
20 of the controversy, we appeal to the parties to
21 refrain from resort to war. We urge that they settle
22 their differences in accordance with principles which,
23 in the opinion not alone of our people but of most
24 peoples of the world should govern in international
25 relationships. We consider applicable throughout the

1 world, in the Pacific areas as elsewhere, the prin-
2 ciples set forth in the statement of July 16. That
3 statement of principles is comprehensive and basic.
4 It embraces the principles embodied in many treaties,
5 including the Washington Conference treaties and the
6 Kellogg-Briand Pact of Paris.

7 "From the beginning of the present contro-
8 versy in the Far East, we have been urging upon both
9 the Chinese and the Japanese Governments the impor-
10 tance of refraining from hostilities and of maintaining
11 peace. We have been participating constantly in con-
12 sultation with interested governments directed toward
13 peaceful adjustment. This Government does not believe
14 in political alliances or entanglements, nor does it
15 believe in extreme isolation. It does believe in inter-
16 national cooperation for the purpose of seeking through
17 pacific methods the achievement of those objectives
18 set forth in the statement of July 16. In the light
19 of our well-defined attitude and policies, and within
20 the range thereof, this Government is giving most
21 solicitous attention to every phase of the Far
22 Eastern situation, toward safeguarding the lives and
23 welfare of our people and making effective the policies
24 -- especially the policy of peace -- in which this
25 country believes and to which it is committed."

1 "This Government is endeavoring to see kept
2 alive, strengthened, and revitalized, in reference to
3 the Pacific area and to all the world, these fundamen-
4 tal principles."

5 Tendering in evidence IPS document No. 219P(36)
6 from exhibit 58, which is an excerpt from the commu-
7 nication of Secretary of State to the Minister in
8 Switzerland, dated September 28, 1937.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Prosecution's document
11 No. 219P(36) will receive exhibit No. 953.

12 (Whereupon, the document above
13 referred to was marked prosecution's exhibit
14 No. 953, and was received in evidence.)

15 MR. HARLIN: Reading prosecution exhibit
16 No. 953:

17 "The Secretary of State to the Minister in
18 Switzerland (Harrison). (Substance).

19 "Washington, September 28, 1937, 10 p.m.

20 "It is desirable, however, inasmuch as the
21 United States Government associates itself with the
22 League's deliberations through authorizing the
23 Minister to sit with the Assembly Advisory Committee
24 and the subcommittee, that the Minister know of and
25 understand the American Government's thought in

connection with his possible contributions toward

1 enabling his associates at Geneva to reach decisions
2 which may have some beneficial practical effect regard-
3 ing objectives which are common to the United States
4 and to the League's members.

5 "When Japan embarked last July upon military
6 activities in China, the United States Government, which
7 took full account of evidence presented at that time
8 and during the past indicative of Japanese political
9 objectives, on July 16 made public a statement of basic
10 principles which it felt should underlie normal and
11 peaceful international relationships.

12 "The United States Government reiterated more
13 specifically on August 23 in a statement, with espe-
14 cial reference to the armed conflict between Japan
15 and China, certain of the principles comprised in the
16 statement of July 16, and the view was emphasized that
17 these principles applied as well to the Pacific area as
18 elsewhere. Attention was called, inter alia, expressly
19 to the Kellogg-Briand Pact and the Nine-Power Treaty.
20 Exception was thus definitely taken to the course
21 followed by Japan.

22 "Moreover, several definite steps have been
23 taken in support of the American position: (1) direct
24 appeals to Japan and China to desist or refrain from
25

1 hostilities; (2) repeated statements to both sides
2 regarding the availability to them of good offices
3 should they make any suggestions for resort to
4 conciliation processes; (3) repeated protests to the
5 Japanese Government against aerial bombing of non-
6 combatants and publication in one instance of an
7 American note to the Japanese Government in objection
8 to and condemnation of such bombing and in another
9 instance issuance of a statement today on that subject.

10 "Japan's military operations have increased
11 in intensity and in extent with the unfolding
12 situation. Charges of Japan's violation of treaty
13 provisions and international law have been amplified
14 by the Chinese Government, and a willingness to resort
15 to conciliation processes has been affirmed by the
16 Chinese. The Japanese have announced, however, their
17 intention to destroy the Chinese will and capacity
18 to resist and actually to overthrow the existing Chinese
19 Government. By declining the League Assembly Advisory
20 Committee's invitation, the Japanese have refused
21 even to consult with other governments with a view
22 to adjusting their difficulties with China.

23 "The Secretary expresses the feeling that
24 the Sino-Japanese situation definitely concerns the
25 world as a whole. No longer do the questions

at 10:30 A.M. and

1 involved relate merely to specific provisions of
2 particular treaties being violated; they are questions
3 of international law, of principles of humanity, of
4 war and peace. Naturally it is true that the ques-
5 tions involve violating agreements, particularly the
6 League of Nations Covenant, the Nine-Power Treaty,
7 and the Kellogg-Briand Pact. But problems of world
8 economy, world humanity, and world security also are
9 involved.

10 "Hull."

11 We desire, if the Court please, now to offer
12 for identification only, IPS document No. 853.

13 This is one of a series of bound volumes,
14 Volume II, of the Japanese Government, entitled
15 "Announcements of the Japanese Government Relating to
16 the China Incident, and it comprises a number of
17 separate, individual items, each constituting a
18 separate item within itself, from which we propose to
19 offer in evidence certain individual documents.

20 CLERK OF THE COURT: Prosecution's document
21 No. 853 will receive exhibit No. 954 for identification
22 only.

23 (Whereupon, the document above
24 referred to was marked prosecution's exhibit
25 No. 954 for identification.)

1 MR. HARLIN: We offer in evidence IPS
2 document 853-A from prosecution exhibit for identifi-
3 cation No. 954. This is an invitation of the government
4 of Belgium to Japan, dated October 20, 1937, to attend
5 the Brussels Conference.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution's document
8 No. 853-A will receive exhibit No. 954-A.

9 (Whereupon, the document above
10 referred to was marked prosecution's exhibit
11 No. 954-A, and was received in evidence.)

12 MR. HARDIN: We read prosecution exhibit 954-A
13 in evidence.

14 "IPS Document 853, taken from Japanese Foreign
15 Ministry.

16 "Announcement of the Japanese Government
17 Relating to the China Incident.

18 "(Vol. 2), December 1937.

19 "Announcement by Foreign Ministry on Invita-
20 tion to Attend the Nine-Power Treaty Meeting.

21 "Belgian Embassy.

22 "His Excellency, the Belgian Ambassador, Baron
23 de Bassompierre, paid an official call on Mr. Koki
24 HIROTA, Minister for Foreign Affairs, on October 21st,
25 at 10:30 A.M. and handed him the following Note Verbale.

1 "Note Verbale.

2 "In compliance with the request of the Govern-
3 ment of Great Britain, made with the approbation of
4 the Government of the United States of America, the
5 Royal Government propose to the Signatory States of
6 the Treaty of February 6, 1922, to convene at Brussels
7 on the 30th of this month, with the view of examining
8 in accordance with Article 7 of that Treaty, the si-
9 tuation in the Far East and of studying the amicable
10 means of hastening the end of the unfortunate conflict
11 existing there.

12 "Tokyo, October 20th, 1937."
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1 We now offer in evidence IPS document No.
2 853B from prosecution's exhibit 954 for identifica-
3 tion. This is the reply from the Japanese Govern-
4 ment declining the invitation to the Brussels
5 conference.

6 CLERK OF THE COURT: Do you wish it for
7 identification or in evidence?

8 MR. HARDIN: In evidence.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Prosecution's document
11 No. 853B will receive exhibit No. 954B.

12 (Whereupon, the document above
13 mentioned was marked prosecution's
14 exhibit No. 954B and was received in
15 evidence.)

16 MR. HARDIN: "Reply of Japanese Government
17 Notifying its Non-Attendance at Nine-Power Treaty(s)
18 Meeting 27 October 1937.

19 "Reply of Japanese Government Notifying
20 its Non-Attendance at Nine-Power Treaty(s) Meeting
21 27 October 1937.

22 "The Japanese Government have the honour
23 to acknowledge the receipt of the Note Verbale under
24 the date of the 20th instant, by which the Royal Gov-
25 ernment, in accordance with the request of the Govern-

1 ment of Great Britain, and with the approbation of
2 the Government of the United States of America, pro-
3 pose to the Powers signatory to the Treaty of Feb-
4 ruary 6, 1922, to meet at Brussels on the 30th of this
5 month in order to examine, in conformity with the
6 Article VII of the said treaty, the situation in the
7 Far East and to study amicable means of hastening
8 the end of the regrettable conflict which is taking
9 place there.

10 "The League of Nations, in the report
11 adopted on the 6th of the month, has declared on the
12 basis of the declaration of only one of the two par-
13 ties that the military operations carried on by Ja-
14 pan in China are in violation of the Nine-Power
15 Treaty. The action of Japan in China is a measure of
16 self-defence which she has been compelled to take
17 in the face of China's violent anti-Japanese policy
18 and practice, especially by her provocative acts
19 appealing to force of arms; and consequently, it
20 lies, as has been declared already by the Imperial
21 Government, outside the purview of the Nine-Power
22 Treaty.

23 "The Assembly of the League of Nations has
24 even gone the length of assuring China of its moral
25 support and of recommending to its members to abstain

1 from any action that might weaken that country's
2 power of resistance and add to its difficulties in
3 the present conflict, and also to study how they
4 might individually give aid to China. This is to take
5 no account of the just intention of the Imperial Gov-
6 ernment, who propose to bring about a sincere co-oper-
7 ation between Japan and China, to assure enduring
8 peace in East Asia, and to contribute thereby to the
9 peace of the world. This is to take sides with one
10 of the parties and to encourage its hostile dispo-
11 sition, but in no way to contribute to an early
12 settlement.

13 "The Royal Government make in their invi-
14 tation no mention of the connection between the pro-
15 posed Conference and the League of Nations. However,
16 in view of the fact that in its Resolution, the
17 League of Nations has suggested a meeting of these of
18 its members who are party to the Nine-Power Treaty,
19 and that the Government of the United States, who
20 have acquiesced in the request of the Government of
21 Great Britain for the convocation of the conference,
22 have declared on October 6 their approval of the Res-
23 olution, the Imperial Government cannot but conclude
24 that the convocation of the conference is linked to
25 the Resolution of the League of Nations. Now the

1 League of Nations, as mentioned above, has expressed
2 its views casting reflection upon the honour of Ja-
3 pan, and it has adopted a resolution which is incon-
4 testably unfriendly towards her.

5 "In these circumstances, the Imperial Gov-
6 ernment are constrained to believe that frank and full
7 discussion to bring about a just, equitable and real-
8 istic solution of the conflict between Japan and Chi-
9 na, cannot be expected between the Powers concerned
10 at the proposed conference.

11 "Moreover, the present Sino-Japanese con-
12 flict arising from the special situation of East
13 Asia has a vital bearing upon the very existence of
14 the two countries. The Imperial Government are firm-
15 ly convinced that an attempt to seek a solution at a
16 gathering of so many Powers whose interests in East
17 Asia are of varying degrees, or who have practically
18 no interests there at all, will only serve to com-
19 plicate the situation still further and to put seri-
20 ous obstacles in the path of a just and proper so-
21 lution.

22 "For these reasons explained above, the
23 Imperial Government regret their inability to accept
24 the invitation of the Royal Government.

25 "The present conflict has been caused by

1 none other than the Chinese Government who for these
2 many years have been engaged as a matter of national
3 policy in disseminating anti-Japanese sentiment and
4 encouraging anti-Japanese movements in China, and who,
5 in collusion with the Communist elements, have men-
6 aced the peace of East Asia by their virulent agi-
7 tations against Japan. Consequently, what is most
8 urgently needed for a solution of the conflict is a
9 realization on the part of the Chinese Government of
10 the common responsibility of Japan and China respect-
11 ing the stability of East Asia, a revision of their
12 attitude, and a change of their policy to that of
13 co-operation between the two countries. What Japan
14 asks of the Powers is that they comprehend fully
15 this need. Their cooperation based upon such com-
16 prehension can alone, she believes, contribute effec-
17 tively toward the stabilization of East Asia."
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1 We offer in evidence prosecution's document
2 No. 853C from prosecution's exhibit 954 for identi-
3 fication. This is a British note delivered by
4 Craigie to the Foreign Minister in Japan on December
5 16, 1937.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution's document
8 No. 853C will receive exhibit No. 954C.

9 (Whereupon, the document above
10 mentioned was marked prosecution's
11 exhibit No. 954C and was received in
12 evidence.)

13 MR. HARDIN: We read prosecution's exhibit
14 954C in evidence:

15 "THE BRITISH NOTE DELIVERED BY SIR ROBERT CRAIGIE
16 TO THE FOREIGN MINISTER ON DECEMBER 16, 1937

17 "Concerning attacks made on British warships and Merchant
18 shipping at Wuhu and Nanking.

19 "Your Excellency,

20 "I have the honour on instructions from His
21 Majesty's Government in the United Kingdom to address
22 your Excellency on the subject of attacks made by Japa-
23 nese aircraft and land forces on British warships and
24 merchant shipping at Wuhu and near Nanking on 12th
25 December. These incidents clearly raise grave issues.

1 "2. At Wuhu a British tug which had con-
2 veyed from Nanking His Majesty's Consul, the British
3 Military Attache and the Flag-Captain to the British
4 Rear-Admiral, Yangtze, was attacked by Japanese machine-
5 gun fire after transferring these officers to H.M.S.
6 Ladybird. The latter proceeded to join the tug in
7 order to protect her, when she observed a Japanese
8 field gun battery firing on merchant ships concentra-
9 ted above the Asiatic Petroleum Company's installa-
10 tion. Firing continued and was directed at H.M.S.
11 Ladybird herself.

12 "3. There were four direct hits on this
13 vessel, one naval rating was killed, another was
14 seriously wounded and there were several minor casual-
15 ties including Flag-Captain. A direct hit was also
16 seen to be sustained by the British merchant ship
17 Suiwo. H.M.S. Bee then arrived on the scene and was
18 also fired on by the shore battery. The Commander
19 of H.M.S. Bee landed to protest and was informed by
20 Colonel HASHIMOTO, the senior Japanese military offi-
21 cer then at Wuhu, that firing on warships was due to
22 a mistake but that he had orders to fire on every ship
23 on the river. At a later interview the same officer
24 stated categorically that if any ships moved on the
25 river they would be fired on and, despite protests,

1 H.M.S. Bee and Ladybird after berthing remained cov-
2 ered by guns at point blank range.

3 "4. Near Hsia San-shan above Nanking where
4 British merchant ships were concentrated in a part of
5 the river previously designated by the Japanese
6 Commander-in-Chief as a safety-zone, three separate
7 bombing attacks were made by Japanese aircraft on them
8 and on H.M. Ships Cricket and Scarab which were with
9 them.

10 "5. His Majesty's Government have now been
11 glad to receive your Excellency's note of the 14th
12 December offering the profound apology of the Imperial
13 Japanese Government for the attacks on His Majesty's
14 Ships, stating that measures were immediately taken
15 to prevent the recurrence of such incidents and add-
16 ing that they will deal suitably with those responsi-
17 ble and pay the necessary compensation.

18 "6. His Majesty's Government observe that
19 Your Excellency's note makes no mention of the
20 attacks on British merchant vessels and I am instructed
21 to request that an assurance may be given that all that
22 is said in that note applies equally to these attacks.

23 "7. His Majesty's Government take particu-
24 lar note of the statement that those responsible will
25 be suitably dealt with. Adequate punishment of those

1 responsible for the particular attacks under dis-
2 cussion seems indeed to His Majesty's Government to
3 be the only method by which further outrages can be
4 prevented.

5 "8. His Majesty's Government cannot but
6 recall the previous incidents in which the Japanese
7 Government have expressed regret for attacks made
8 on British nationals and property and have given as-
9 surance that adequate steps had been taken to prevent
10 any repetition. They call to mind the attack made
11 on His Majesty's Ambassador to China while travel-
12 ling by road from Nanking to Shanghai, the subse-
13 quent attack on motorcars conveying British officials
14 on a similar journey, the attacks on British civilians
15 and military posts on the defense perimeter at Shanghai,
16 as well as other incidents, and the repeated assurances
17 of the Japanese Government of their intention fully to
18 respect the interests of third Powers in the present
19 conflict with China. It is clear that the steps
20 hitherto taken by the Japanese Government to prevent
21 such attacks have so far failed in this purpose and
22 His Majesty's Government must now ask to be informed
23 that measures have actually been taken of a character
24 which will put a definite stop to the incidents of
25 which they complain.

9,455

1 "I avail myself of this opportunity to renew
2 to Your Excellency the assurance of my highest consid-
3 eration.

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5 "Signed: R. L. Craigie."
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1 We now offer in evidence IPS document
2 No. 219P (46) from exhibit 58, for identification.
3 This is a message from Ambassador Grew in Japan to
4 Japanese Minister HIROTA, Tokyo, September 17, 1937.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 219P (46) will receive exhibit No. 955.

8 (Whereupon, the document above
9 referred to was marked prosecution's exhibit
10 No. 955 and was received in evidence.)

11 MR. HARDIN: We read prosecution's exhibit
12 No. 955:

13 "The American Ambassador in Japan (Grew)
14 to the Japanese Minister for Foreign Affairs (HIROTA)
15 "Tokyo, September 17, 1937.

16 "Excellency: I have the honor, by direction
17 of my Government, to address to Your Excellency the
18 following note:

19 "Since the beginning of the present
20 fighting in China the American Government has re-
21 ceived reports of attacks by Japanese armed forces
22 in China upon American nationals and their property,
23 including attacks upon American humanitarian and
24 philanthropic establishments and upon the persons and
25 property of non-combatants generally.

1 "The American Government desires in
2 particular to bring to the attention of the Japanese
3 Government a recent attack on September 12 by
4 Japanese planes on an American missionary hospital
5 in South China, located at Waichow, Kwangtung Province.
6 Information in the possession of the American Govern-
7 ment indicates that three Japanese planes flew low
8 three times over the mission compound where two large
9 American flags were flying; that each time the planes
10 dropped bombs all of which exploded seriously injuring
11 personnel of the hospital as well as damaging the
12 hospital and the residence, that there were no anti-
13 aircraft guns at Waichow, and that the mission itself
14 is two miles distant from any Chinese military en-
15 campment.

16 "Attack upon non-combatants is prohibited
17 both by long accepted principles and by established
18 rules of international law. Also, attack upon human-
19 itarian establishments, especially those which are
20 lawfully under the flags of countries in no way party
21 to military operations, have no warrant in any system
22 of law or of humane conduct. The American Government,
23 therefore, is impelled, in fulfillment of its obliga-
24 tions toward its nationals and on behalf of those
25 fundamental principles of law and of morality which

1 relate to the immunity of non-combatants and
2 humanitarian establishments, emphatically to voice
3 objection to such attacks and to urge upon the
4 Japanese Government, which the American Government
5 cannot believe approves of such disregard of prin-
6 ciples, that effective steps be taken toward averting
7 any further such attacks.'

8 "I avail myself (etc.)

9 "Joseph C. Grew."

10 We offer in evidence IPS document No.
11 219P (47) from exhibit 58. This is an excerpt from
12 a message from Ambassador Grew in Japan to Foreign
13 Minister HIROTA, dated September 22, 1937.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Prosecution's document
16 No. 219P (47) will receive exhibit No. 956.

17 (Whereupon, the document above
18 referred to was marked prosecution's exhibit
19 No. 956 and was received in evidence.)

20 MR. HARDIN: We will now read prosecution's
21 exhibit No. 956:

22 "The American Ambassador in Japan (Grew)
23 to the Japanese Minister for Foreign Affairs (HIROTA)

24 "Tokyo, September 22, 1937. (Excerpts.)

25 "The American Government objects both to

1 such jeopardizing of lives of its nationals and of
2 non-combatants generally and to the suggestion that
3 its officials and nationals now residing in and around
4 Nanking should withdraw from the areas in which they
5 are lawfully carrying on their legitimate activities.

6 "In view of the fact that Nanking is the
7 seat of Government in China and that there the American
8 Ambassador and other agencies of the American Govern-
9 ment carry on their essential functions, the American
10 Government strongly objects to the creation of a
11 situation in consequence of which the American
12 Ambassador and other agencies of this Government are
13 confronted with the alternative of abandoning their
14 establishments or being exposed to grave hazards.

15 "In the light of the assurances repeatedly
16 given by the Japanese Government that the objectives
17 of Japanese military are limited strictly to Chinese
18 military agencies and establishments and that the
19 Japanese Government has no intention of making non-
20 military property and non-combatants the direct objects
21 of attack, and of the Japanese Government's expression
22 of its desire to respect the embassies, warships and
23 merchant vessels of the Powers at Nanking, the American
24 Government cannot believe that the intimation that the
25 whole Nanking area may be subjected to bombing

1 operations represents the considered intent of the
2 Japanese Government.

3 "Joseph C. Grew."

4 We offer in evidence IPS document No.
5 219P (48) from exhibit 58, which is an excerpt from
6 a memorandum of Hamilton, Chief of the Division of
7 Foreign Affairs relating to a conversation with SUMA,
8 Counsellor of the Japanese Embassy in Washington,
9 dated September 25, 1937.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Prosecution's document
12 No. 219P (48) will receive exhibit No. 957.

13 (Whereupon, the document above
14 referred to was marked prosecution's exhibit
15 No. 957 and was received in evidence).

16 MR. HARDIN: I will read prosecution's
17 exhibit No. 957:

18 "Memorandum by the Chief of the Division
19 of Far Eastern Affairs (Hamilton) of a conversation
20 with the Counsellor of the Japanese Embassy (SUMA).

21 "(Washington,) September 25, 1937.

22 "Excerpts.

23 "I referred to the recent Japanese bombing
24 operations at Canton where, according to the reports,
25 some 2,000 non-combatants had been killed. I said that

1 I had noticed a statement in some newspaper to the
2 effect that the Japanese military were very much
3 surprised that reports were being sent from China to
4 the effect that Japanese military operations were
5 resulting in the death of non-combatants. I said
6 that this killing of non-combatants at Canton, at
7 Hankow, at Nanking and at various other places in
8 China could not but create the most deplorable im-
9 pression in this country and in other countries. . .
10 I said again that this whole matter of bombing non-
11 combatants was deplorable and was creating a most
12 unfortunate impression.

13 "Maxwell M. Hamilton."

14 We now offer in evidence IPS document No.
15 219P (49) from exhibit 58, which is a resolution of
16 the League of Nations Advisory Committee, dated
17 September 27, 1937.

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Prosecution's document
20 No. 219P (49) will receive exhibit No. 958.

21 (Whereupon, the document above
22 referred to was marked prosecution's exhibit
23 No. 958 and was received in evidence.)

24 MR. HARDIN: We read prosecution's exhibit
25 No. 958:

1 "Resolution adopted by the League of
2 Nations Advisory Committee on September 27, 1937.

3 "The Advisory Committee,

4 "Taking into urgent consideration the
5 question of the aerial bombardment of open towns
6 in China, by Japanese aircraft,

7 "Expresses its profound distress at the
8 loss of life caused to innocent civilians, including
9 great numbers of women and children, as a result of
10 such bombardments.

11 "Declares that no excuse can be made for
12 such acts which have aroused horror and indignation
13 throughout the world,

14 "And solemnly condemns them."

15 "We now offer in evidence IPS document No.
16 219P (50) from exhibit 58, which is press release
17 by the Department of State, September 28, 1937.

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Prosecution's document
20 No. 219P (50) will receive exhibit No. 959.

21 (Whereupon, the document above
22 referred to was marked prosecution's exhibit
23 No. 959 and was received in evidence.)

24 MR. HARDIN: Reading prosecution exhibit
25 No. 959:

1 "Press Release Issued by the Department of
2 State on September 28, 1937.

3 "The Department of State has been informed
4 by the American Minister to Switzerland of the text
5 of the resolution unanimously adopted on September 27
6 by the Advisory Committee of the League of Nations on
7 the subject of aerial bombardment by Japanese air
8 forces of open towns in China.

9 "The American Government, as has been set
10 forth to the Japanese Government repeatedly, and
11 especially in this Government's note of September 22,
12 holds the view that any general bombing of an exten-
13 sive area wherein there resides a large populace
14 engaged in peaceful pursuits is unwarranted and
15 contrary to principles of law and of humanity."

16 We offer in evidence IPS document No.
17 219P (51) from exhibit 58.

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Prosecution's document
20 No. 219P (51) will receive exhibit No. 960.

21 (Whereupon, the document above
22 referred to was marked prosecution's exhibit
23 No. 960 and was received in evidence.)

24 MR. HARDIN: Reading prosecution exhibit
25 No. 960:

1 "Press Release Issued by the Department of
2 State on January 31, 1938.

3 "Excerpt.

4 "The Department of State on the evening of
5 January 28, 1938, instructed the American Embassy at
6 Tokyo to make oral representations to the Japanese
7 Foreign Office with reference to the incident involving
8 the slapping by a Japanese soldier of Mr. John M.
9 Allison, third secretary of the American Embassy at
10 Nanking, on January 26:

11 "The Department instructed the Embassy at
12 Tokyo orally to communicate the substance of Mr.
13 Allison's telegrams of January 27 and 28 to a high
14 officer of the Japanese Foreign Office and that in
15 so doing there be emphasized that in weighing the
16 gravity of the incident this Government takes into
17 account the fact that the whole incident, including
18 the slapping by a Japanese soldier of a diplomatic
19 representative of the Government, is not an isolated
20 case, but represents but one of and cannot be dis-
21 sociated from a series of cases of irregular entry of
22 American property and disregard of American rights by
23 Japanese soldiers."

24 We now offer in evidence IPS document No.
25 219P (37) from exhibit 58, which is excerpts from an

1 address delivered by President Roosevelt in Chicago,
2 October 5, 1937.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Prosecution's document
5 No. 219P (37) will receive exhibit No. 961.

6 (Whereupon, the document above
7 referred to was marked prosecution's exhibit
8 No. 961 and was received in evidence.)

9 MR. HARDIN: We read prosecution's exhibit
10 No. 961:

11 "Address delivered by President Roosevelt
12 at Chicago on October 5, 1937. Excerpt"--

13 THE PRESIDENT: Read it after recess.

14 We will recess for fifteen minutes.

15 (Whereupon, at 1442, a recess was
16 taken until 1505, after which the proceedings
17 were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Logan.

4 MR. LOGAN: If the Tribunal please, several
5 of the recent documents which have been admitted, for
6 example 958 and 959 and several more which are pro-
7 posed to be offered, apparently are being offered to
8 set forth the principle of international law that the
9 bombing of noncombatants is illegal. The defendants
10 contend that these documents should be disregarded by
11 the Tribunal because the advent of the atomic bomb and
12 its recent usage in this war dictates such a principle
13 of international law as obsolete, even on the theory
14 of estoppel alone, and we see no reason why the prose-
15 cution should go into it.

16
17 THE PRESIDENT: Well, clearly the quality of
18 these acts must be determined in the light of the law
19 as it existed at the time they were done. As to whether
20 there has been any change since, well, we may hear the
21 defense at the proper time. This is rather too early;
22 but my colleagues, or some of them, are a bit restless
23 about the type of evidence you are tendering now, Mr.
24 Hardin. Some of them ask what its purpose is. I can
25 only suggest aggravation of punishment, if we arrive at
that stage. It tends to show the great patience

1 displayed by America and perhaps Great Britain, and
2 the truculence of the Japanese notwithstanding that.
3 However, my colleagues are restless, as I say, and I
4 will now ask you to explain what your purpose is in
5 pressing so much of it.

6 MR. HARDIN: The abstract, if it please your
7 Honor, the subject is the relations between the
8 countries. We are tracing that from the beginning
9 of 1931, as charged in the Indictment, to the end of
10 the war, or particularly to the beginning of the war.
11 Specifically, the issue is the fault for the war, the
12 causes of it. The United States and Britain in their
13 great effort consistently pursued from 1931 at the
14 breach of peace at Mukden to Pearl Harbor to get Japan
15 to see and understand and adhere to treaties, not
16 violate them, and to adhere to principles of inter-
17 national law and not violate them on the one hand,
18 and Japan's disregard of all these obligations, dis-
19 regard of the importunities of the Governments of the
20 United States and Britain. to get her to keep from
21 doing it. The fundamental charge in this Indictment
22 is conspiracy, agreement. Basic under the whole
23 Indictment is conspiracy. This evidence shows, we
24 think -- we are offering it for the purpose of tending
25 to show not only what I have said but that these

1 defendants, others in authority, people with them
2 were in agreement to carry forward aggressive war
3 beginning with Mukden, and carry through consistently
4 for the ten-year period.

5 THE PRESIDENT: To show they were bent on
6 war, notwithstanding American and British appeals,
7 evidence of intent, guilty mind, mens rea, and aggra-
8 vation.

9 MR. HARDIN: Your Honor has the key to the
10 matter. There is the intention. This discloses the
11 intention from the beginning, not only the intention
12 throughout the period, but the aggravation of the
13 program.

14 THE PRESIDENT: Still you may have quoted too
15 much from these addresses of Mr. Stimson, and you may
16 be quoting too much of this speech of President Roose-
17 velt.

18 MR. HARDIN: Certainly, it is not our desire
19 to tire the Court with it, but the relevant matters
20 which speak so eloquently and decisively of the
21 attitudes of both sides was thought by us to be relevant
22 and important, even if cumulative.

23 THE PRESIDENT: These are not extemporary
24 utterances, but carefully studied, and there is not
25 a word wasted, or should not be. I cannot say that

1 any words have been wasted. However, there is un-
2 easiness among Members of the Bench based on the length
3 of some of these statements you are reading to us.
4 See whether you cannot cut them down in the future,
5 Mr. Hardin.

6 MR. HARDIN: Thank you, your Honor, for the
7 suggestion. Now, this afternoon there is not but one
8 more speech, as I recollect it, and the rest of it
9 short documents, and tonight we will undertake to
10 strike from the other addresses or documents that may
11 be long so as to reduce them to fewer words.

12 THE PRESIDENT: Well, proceed to read this
13 speech, or such part of it as you think fit.

14 MR. HARDIN: It is a little difficult with-
15 out taking more time than it would take to read it.

16 THE PRESIDENT: I think you had better read
17 this one. There may be parts of it which obviously
18 should not be read. However, if you are in doubt, read
19 the lot.

20 MR. HARDIN: We now offer in evidence I. P. S.
21 document No. 219F-38 from exhibit 58, which is an
22 excerpt from the first -- I apologize. I jumped my
23 guns.

24 I now offer in evidence I. P. S. document
25 219P-37, from exhibit 58, which is an excerpt from an

1 address delivered by President Roosevelt at Chicago
2 on October 5, 1937.

3 THE PRESIDENT: That has been admitted.

4 MR. HARDIN: It has been admitted.

5 We will read prosecution exhibit 961.

6 (Reading): "ADDRESS DELIVERED BY PRESIDENT
7 ROOSEVELT AT CHICAGO ON OCTOBER 5, 1937.

8 "Excerpt.

9 "The political situation in the world, which
10 of late has been growing progressively worse, is such as
11 to cause grave concern and anxiety to all the peoples
12 and nations who wish to live in peace and amity with
13 their neighbors.

14 "Some 15 years ago the hopes of mankind for a
15 continuing era of international peace were raised to
16 great heights when more than 60 nations solemnly
17 pledged themselves not to resort to arms in furtherance
18 of their national aims and policies. The high aspira-
19 tions expressed in the Briand-Kellogg Peace Pact and
20 the hopes for peace thus raised have of late given way
21 to a haunting fear of calamity. The present reign of
22 terror and international lawlessness began a few years
23 ago.

24 "It began through unjustified interference in
25 the internal affairs of other nations or the invasion of

1 alien territory in violation of treaties and has now
2 reached a stage where the very foundations of civiliza-
3 tion are seriously threatened. The landmarks and
4 traditions which have marked the progress of civiliza-
5 tion toward a condition of law, order, and justice are
6 being wiped away.

7 "Without a declaration of war and without
8 warning or justification of any kind, civilians,
9 including women and children, are being ruthlessly
10 murdered with bombs from the air. In times of so-
11 called peace ships are being attacked and sunk by sub-
12 marines without cause or notice. Nations are fomenting
13 and taking sides in civil warfare in nations that have
14 never done them any harm. Nations claiming freedom
15 for themselves deny it to others.

16 "Innocent peoples and nations are being
17 cruelly sacrificed to a greed for power and supremacy
18 which is devoid of all sense of justice and humane
19 consideration.

20 "To paraphrase a recent author, 'perhaps we
21 foresee a time when men, exultant in the technique
22 of homicide, will rage so hotly over the world that
23 every precious thing will be in danger, even book and
24 picture and harmony, every treasure garnished through
25 two millenniums, the small, the delicate, the

1 defenseless, all will be lost or wrecked or utterly
2 destroyed.'

3 "If those things come to pass in other parts
4 of the world let no one imagine that America will
5 escape, that it may expect mercy, that this Western
6 Hemisphere will not be attacked, and that it will
7 continue tranquilly and peacefully to carry on the
8 ethics and the arts of civilization.

9 "If those days come 'there will be no
10 safety by arms, no help from authority, no answer in
11 science. The storm will rage till every flower of
12 culture is trampled and all human beings are leveled
13 in a vast chaos.'"

14 THE PRESIDENT: Well, that will not help very
15 much.

16 MR. HARDIN: No. With the Court's permission,
17 I will omit the rest of that page.

18 THE PRESIDENT: Appeals directed to Japan are
19 the things you should put in. So far most of your
20 material is confined to such appeals.

21 MR. HARDIN: It is so difficult, your Honor,
22 it is so difficult to extricate more of that without
23 taking more time than it will take to read it. It is
24 clear, your Honor that Japan was a member of the Tri-
25 partite Pact, and all of this has allusion to European --

1 new order in East Asia, the new order in Europe, and
2 arrangements or agreements between Germany, Japan and
3 Italy, and it is an exemplification --

4 THE PRESIDENT: It is all very general and
5 seems to me not to make a new point of any sort.
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MR. FURNESS: If the Court please, the Tripartite was not in existence at this time, so that is a misstatement -- inadvertent.

MR. HARDIN: If your Honor objects to the reading of the rest of that, I do not mean to intrude upon the good nature of the Court.

THE PRESIDENT: We are getting concerned with the extent of the reading you are doing. I think the majority of the Court are under the impression this might be omitted, that in all events you might defer it and reconsider it. Probably you will decide not to read it, Mr. Hardin. You could find dozens of speeches like that by prominent men, by Mr. Churchill and others, about that time, except that it was too early for Mr. Churchill in 1934. However, defer the reading of it.

MR. HARDIN: Okay. We just thought that one like this from so eminent an authority so clearly expounding the foreign policies of our countries and their attitudes would be helpful and enlightening to the record.

MR. E. WILLIAMS: We offer in evidence IPS document No. 219P (38) from exhibit 58, which is an excerpt from the first report adopted by the League of Nations Assembly on October 6, 1937.

1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Prosecution's document
3 No. 219P (38) will receive exhibit No. 962.

4 (Whereupon, the document above
5 mentioned was marked prosecution's exhibit
6 No. 962 and received in evidence.)

7 MR. E. WILLIAMS: We read prosecution's
8 exhibit No. 962 in evidence:

9 "FIRST REPORT ADOPTED BY THE LEAGUE OF NATIONS
10 ASSEMBLY ON OCTOBER 6, 1937

11 "Excerpt.

12 "It cannot, however, be challenged that
13 powerful Japanese armies have invaded Chinese terri-
14 tory and are in military control of large areas, in-
15 cluding Peiping itself; that the Japanese Government
16 has taken naval measures to close the coast of China
17 to Chinese shipping; and that Japanese aircraft
18 are carrying out bombardments over widely separated
19 regions of the country.

20 "After examination of the facts laid before
21 it, the Committee is bound to take the view that the
22 military operations carried on by Japan against
23 China by land, sea and air are out of all propor-
24 tion to the incident that occasioned the conflict;
25 that such action cannot possibly facilitate or pro-

1 moto the **friendly** cooperation between the two nations
2 that Japanese statesmen have affirmed to be the aim
3 of their policy; that it can be justified neither
4 on the basis of existing legal instruments nor on
5 that of the right of self-defense, and that it is
6 in contravention of Japan's obligations under the
7 Nine-Power Treaty of February 6th, 1922, and under
8 the Pact of Paris of August 27th, 1928."

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1 We next offer in evidence IPS document No.
2 219P (39) from exhibit 58, which is an excerpt from
3 a press release issued by the Department of State,
4 dated October 6, 1937.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 219P (39) will receive exhibit No. 963.

8 (Whereupon, the document above
9 mentioned was marked prosecution's exhibit
10 No. 963 and received in evidence.)

11 MR. E. WILLIAMS: We read prosecution's
12 exhibit No. 963:

13 "PRESS RELEASE ISSUED BY THE DEPARTMENT
14 OF STATE ON OCTOBER 6, 1937

15 "(The following excerpt)

16 "In the light of unfolding developments in
17 the Far East, the Government of the United States has
18 been forced to the conclusion that the action of Japan
19 in China is inconsistent with the principles which
20 should govern the relationships between nations and is
21 contrary to the provisions of the Nine-Power Treaty of
22 February 6, 1922, regarding principles and policies to
23 be followed in matters concerning China, and to those
24 of the Kellogg-Briand Pact of August 27, 1928. Thus
25 the conclusions of this Government with respect to the

foregoing are in general accord with those of the
Assembly of the League of Nations."

1 We offer in evidence IPS document 219P (40)
2 from exhibit 58, which is a telegram from the Honor-
3 able Commander-in-Chief of the United States Asiatic
4 Fleet Yarnell to the Secretary of the Navy, dated
5 December 23, 1937.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution's document
8 No. 219P (40) will receive exhibit No. 964.

9 (Whereupon, the document above
10 mentioned was marked prosecution's exhibit
11 No. 964 and received in evidence.)

12 MR. E. WILLIAMS: We read prosecution's
13 exhibit No. 964:

14 "TELEGRAM
15 THE COMMANDER-IN-CHIEF OF THE UNITED STATES ASIATIC
16 FLEET (YARNELL) TO THE SECRETARY OF THE NAVY (SWANSON)

17 "December 23, 1937
18 "(Received 10:50 a.m.)

19 "0023. The following is the opinion of the
20 Court of Inquiry ordered to investigate the bombing
21 and sinking of the U.S.S. Panay. The opinion is ap-
22 proved.

23 "Opinion was that the U.S.S. Panay was en-
24 gaged in carrying out the well-established policy of
25 the United States of protecting American lives and
property.

"2. That the Japanese aviators should have

1 been familiar with the characteristics and distin-
2 guishing markings of the Panay as this ship was pre-
3 sent at Nanking during the Japanese aerial attacks
4 on this city.

5 "3. That, while the first bombers might
6 not have been able on account of their altitude to
7 identify the U.S.S. Panay, there was no excuse for
8 attacking without properly identifying the target,
9 especially as it was well known that neutral vessels
10 were present in the Yangtze River.

11 "4. That it was utterly inconceivable
12 that the six light bombing planes coming within about
13 six hundred feet of the ships and attacking for over
14 a period of twenty-minutes could not be aware of
15 the identity of the ships they were attacking.

16 "5. That the Japanese are solely and
17 wholly responsible for all losses which have oc-
18 curred as the result of this attack.

19 "6. That the death of C. L. Ensminger, sk
20 first and E. W. G. Hulsebus, coxswain occurred in line
21 of duty and were not the result of their own miscon-
22 duct.

23 "7. That the injured and wounded members
24 of the crew of the U.S.S. Panay received their wounds
25 and injuries in the line of duty and were not the

1 result of their own misconduct.

2 "8. In considering the case as a whole
3 and attending incidents that the court is of the
4 opinion that no offenses have been committed nor
5 blame incurred by any member of the naval service
6 involved."

1 MR. LOGAN: When this Panay Incident came
2 up in several of the other phases, we noted our
3 objection on the ground that the incident had been
4 settled as between the nations. We still note that
5 objection to this document at this stage.

6 THE PRESIDENT: Yes.

7 MR. E. WILLIAMS: We next offer in evidence
8 IPS document 219P (17) from exhibit 58, which is an
9 excerpt from the informal memorandum of the American
10 Embassy in Japan to the Japanese Foreign Minister,
11 dated August 31, 1934.

12 THE PRESIDENT: Admitted on the usual terms.

13 CLERK OF THE COURT: Prosecution's document
14 No. 219P (17) will receive exhibit No. 965.

15 (Whereupon, the document above
16 mentioned was marked prosecution's exhibit
17 No. 965 and received in evidence.)

18 MR. E. WILLIAMS: We read prosecution's
19 exhibit No. 965:

20 "THE AMERICAN EMBASSY IN JAPAN TO THE JAPANESE
21 MINISTRY FOR FOREIGN AFFAIRS

22 "INFORMAL MEMORANDUM

23 "Excerpt.

24 "The plans under discussion are, it appears,
25 plans to monopolize the distribution of oil and in
part at least the importation, processing and expoi-

1 tation of oil in Manchuria. The American Government
2 cannot escape the conclusion that the effectuation of
3 such plans would result in the setting up of a mono-
4 poly control of the oil industry in Manchuria. The
5 development of a monopoly control in any field would
6 be a matter prejudicial to the treaty rights of Ameri-
7 can nationals and would run counter to the principle
8 of the open door.

9 "These plans, however, are apparently being
10 formulated with the concurrence and cooperation of
11 Japanese nationals, the participation of such quasi-
12 official organizations as the South Manchuria Railway
13 and the assent or approval of the Japanese Government.

14 "In approaching the Japanese Government on
15 this subject the American Government has had in mind
16 developments of the past three years in relations be-
17 tween Japan and Manchuria and has given thought to
18 treaties to which Japan and the United States are
19 parties and to various declarations in which the Jap-
20 anese Government has given assurances that there will
21 be maintained in Manchuria the principle of the open
22 door. This Government has, of course, assumed and con-
23 tinues to assume that the Japanese Government wishes to
24 implement its undertakings.

25

"Tokyo, August 31, 1934"

1 We next offer IPS document No. 219P (21)
2 from exhibit 58, which is an excerpt from the memor-
3 andum by the Secretary of State Stimson, Washington,
4 January 5, 1933.

5 THE PRESIDENT: Admitted on the usual
6 terms.

7 CLERK OF THE COURT: Prosecution's document
8 No. 219P (21) will receive exhibit No. 966.

9 (Whereupon, the document above
10 mentioned was marked prosecution's exhibit
11 No. 966 and received in evidence.)

12 MR. E. WILLIAMS: We read prosecution's
13 exhibit No. 966:

14 "MEMORANDUM BY THE SECRETARY OF STATE

15 "(WASHINGTON, January 5,
16 1933.)

17 "Excerpt.

18 "He said that in any event Japan had no
19 territorial ambition south of the Great Wall. I re-
20 minded the Ambassador that a year ago he had told me
21 Japan had no territorial ambitions in Manchuria.

22 "H(ENRY) L. S(TIMSON)"

23 In this particular list we have agreed to
24 read an additional excerpt from that particular docu-
25 ment.

1 THE PRESIDENT: Well, you are offering this
2 as additional material?

3 MR. E. WILLIAMS: We are not offering this
4 in evidence, if your Honor please. We will read
5 this as part of exhibit 966.

6 THE PRESIDENT: As part of exhibit 966?

7 MR. E. WILLIAMS: It is a portion of the
8 memorandum of January 5, 1933 not included in our
9 exhibit 966 but which was processed on orders of
10 the Court when we secured the ruling under 6b (1),
11 and continues to recite part of the memorandum of
12 the conversation with the Japanese Ambassador. And
13 it is as follows:

14 "'But,' he said, 'you must in all frank-
15 ness tell me that no Japanese Cabinet which advo-
16 cated a compromise in the Manchoukuo question could
17 survive in Japan.' That must be regarded as a com-
18 promise incident. I told the Ambassador that in
19 that case I could see on my part no other course than
20 for Japan to get out of the League of Nations and the
21 Kellogg Pact. I went over the situation of the basic
22 policy of this government and the rest of the world
23 and Europe arising out of the Great War which had
24 brought us to the conclusion that another war might
25 destroy our civilization and which had made us

1 determined to support the peace machinery which
2 would render such a recurrence impossible. We recog-
3 nized that Japan had a right to live her own way pro-
4 vided she did not break treaties which she had made
5 and that, if she was determined to lead her life
6 differently from what we were determined to do, I
7 saw no other way but for her to withdraw from the
8 associations and treaties which we proposed to abide
9 by."

10 Offering in evidence IPS document 219 P (41)
11 from exhibit 58, which is an address delivered by
12 the Secretary of State, March 17, 1938.

13 THE PRESIDENT: Major Furness.

14 MR. FURNESS: If the Court please, I object
15 to the introduction of this speech on the ground that
16 it has no probative value since it does not appear to
17 be a communication of the Japanese Government and is
18 not, therefore, connected with any of these defend-
19 ants.

20 THE PRESIDENT: Well, this does refer to
21 Japan, but it does not say much more.

22 Are you pressing all this, Mr. Williams?
23 It is very general, and it is doubtful, however, that
24 these general things can be said to be material in
25 the true sense. Materiality is the test.

1 MR. E. WILLIAMS: If your Honor please,
2 this was a speech bearing on the relationship of the
3 United States to Japan, showing the attitude of the
4 United States in reference to proposals that the
5 United States should withdraw from the Far East.

6 THE PRESIDENT: As I am reminded by a
7 colleague, American policy is not on trial.

8 MR. E. WILLIAMS: We are well aware of that.

9 THE PRESIDENT: I think that pretty aptly
10 states the position.

11 MR. E. WILLIAMS: We are very well aware
12 of that fact, your Honor, but Japanese policy is on
13 trial, and Japanese policy in conflict with that of
14 Great Britain and the United States is on trial.

15 THE PRESIDENT: You are entitled to empha-
16 size the efforts you made to reserve peace with
17 Japan, but I think you are reaching a stage now at
18 which your evidence is becoming cumulative, to say the
19 best. We are getting too much of the same thing.

20 MR. E. WILLIAMS: Unfortunately, if your
21 Honor please, a policy is not a static thing. We
22 have proved so far since this morning what our policy
23 was in 1931, 1932 and on to 1937. The particular
24 document which we now offer has to do with 1938.

25 THE PRESIDENT: Judging from the notes I am

1 getting, Mr. Williams, I, too, need time for con-
2 sideration. But they do emphasize this point: that
3 we are all agreed that perhaps you are overloading
4 your case on this particular issue.

5 MR. BROOKS: If the Tribunal please, I ask
6 that the record show that all of the defendants do
7 not enter into the objection of Mr. Furness on this
8 introduction. In fact, in my case, I am very much
9 inclined to favor its introduction into evidence at
10 this time to show the policy. I believe that the
11 defense can definitely attack American policy, and
12 I want that much quoted. It may have some very
13 important use in presenting a contrast.

14 THE PRESIDENT: We will recess now until
15 half past nine tomorrow morning.

16 (Whereupon, at 1600, an adjourn-
17 ment was taken until Tuesday, 5 November
18 1946, at 0930.)

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